108-3161

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 250.

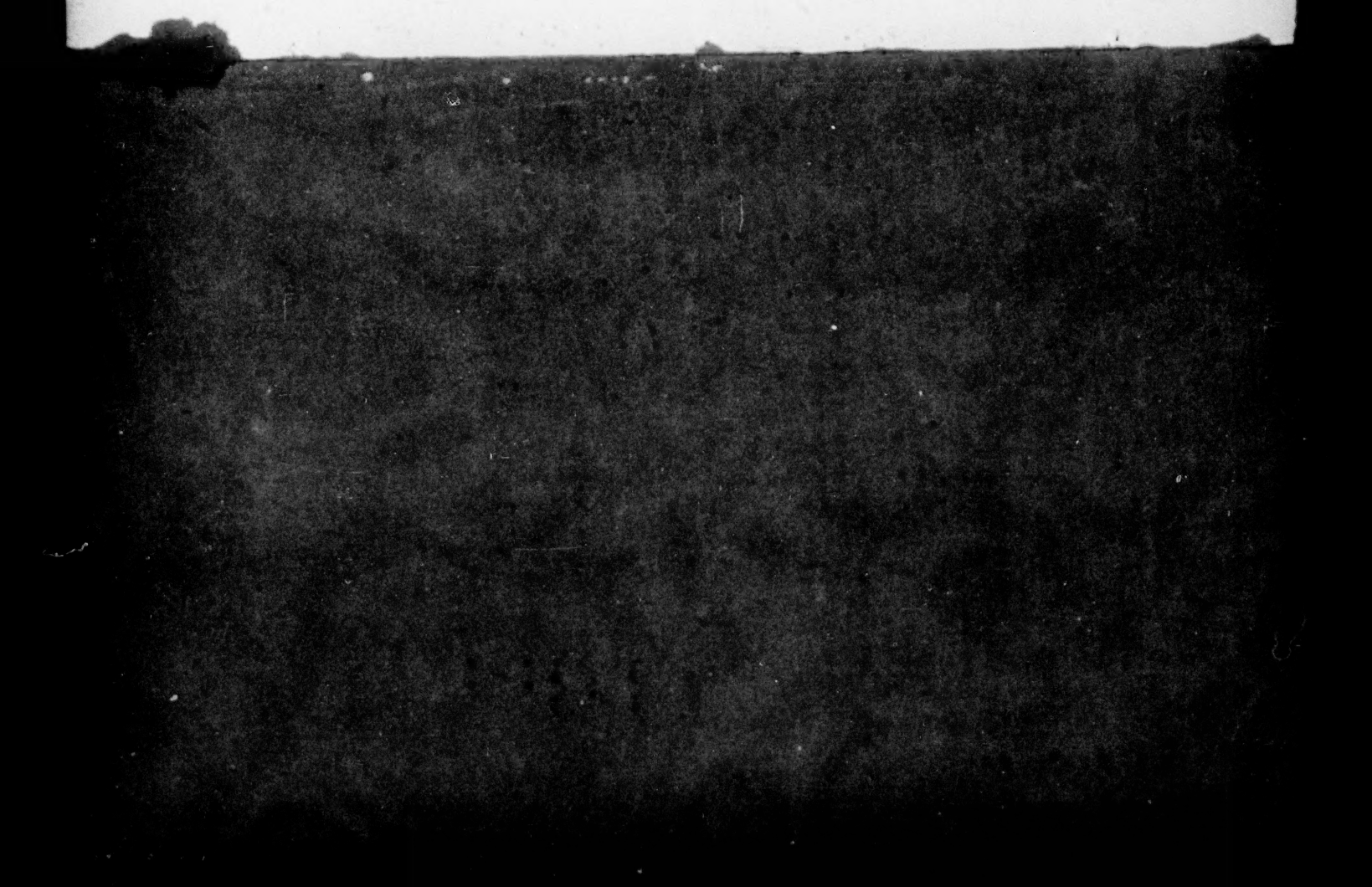
THE ADRIATIC FIRE INSURANCE COMPANY, THE MECHANICS AND TRADERS' FIRE INSURANCE COMPANY, THE LAFAYETTE FIRE INSURANCE COMPANY, AND THE KINGS COUNTY FIRE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

JOHN P. TREADWELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 7, 1880.



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between John P. Treadwell, plaintiff, and The Adriatic Fire Insurance Company, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company, defendants, a manifest error hath happened to the great damage of the said The Adriatic Fire Insurance Company, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company, defendants, as is said, and as appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24th day of June, in the year of our Lord one thousand eight hundred and eighty and of the Independence of the United States the one hundred and fourth.

JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to eighty-seven, inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of The Adriatic Fire Insurance Company, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company, plaintiffs in error, against John P. Treadwell, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twentieth day of July, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the said United States the one hundred and fifth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsed:) U. S. Supreme Court. A. 295. The Adriatic Fire Insurance Company and others, plaintiff in error, against John P. Treadwell, defendant in error. Writ of error. Marr & Parsons, pl'tff's att'ys, 56 Wall st., New York.

The within writ is hereby allowed.
June 24th, 1880.

SAM'L BLATCHFORD.

Service of a copy of within is hereby admitted this 24th day of June, 1880.

WILSON & WALLIS,
Att'ys for Pl'ff.

3 United States circuit court for the southern district of New York.

JOHN P. TREADWELL
against
THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and the Kings County Fire Insurance Company.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness the honorable Morrison R. Waite, Chief Justice of Supreme Court of the United States, at the city of New York, this 21st day of December, in the year one thousand eight hundred and seventy-seven.

[L. S.] JOHN I. DAVENPORT, *Clerk.*
WILSON & WALLIS,
Plaintiff's Attorney.

Office and post-office address, 120 Broadway, New York.

4 I hereby certify that on the 22d day of December, 1877, at the city of New York, in my district, I served the within summons upon the within-named The Kings County Fire Insurance Company by exhibiting to E. T. Backhouse, president thereof, the within original, and at the same time leaving with him a copy thereof.

Dated December 29, 1877.

LOUIS F. PAYN,
U. S. Marshal, S. D. N. Y.
J. E. D., *Dep.*

I hereby certify that on the 22nd day of December, 1877, at the city of New York, in my district, I served the within summons upon the within-named The Lafayette Fire Insurance Company by exhibiting to

H. Giroux, president thereof, the within original, and at the same time leaving with a copy thereof.

Dated , 1877.

LOUIS F. PAYN,
U. S. Marshal, S. D. N. Y.
J. E. D., *Dep.*

I hereby certify that on the 22nd day of December, 1877, at the city of New York, in my district, I served the within summons upon the within-named The Mechanics and Traders' Fire Insurance Company by exhibiting to John M. Tompkins, secretary thereof, the within original, and at the same time leaving with him a copy thereof.

Dated , 1877.

LOUIS F. PAYN,
U. S. Marshal, S. D. N. Y.
J. E. D., *Dep.*

I hereby certify that on the 22nd day of December, 1877, at the city of New York, in my district, I served the within summons upon the within-named The Adriatic Fire Insurance Company by exhibiting to Nelson G. Rodgers, secretary thereof, the within original, and at the same time leaving with him a copy thereof.

Dated , 1877.

LOUIS F. PAYN,
U. S. Marshal, S. D. N. Y.
J. E. D., *Dep.*

(Indorsed:) United States circuit court, southern district of New York. John P. Treadwell vs. Adriatic Fire Insurance Company. Summons. Wilson & Wallis, plaintiff's attorney.

To the defendants within named:

Take notice that upon default judgment taken for the sum of $16,635.00 in money, with interest from the 1st day of June, 1877, besides costs.

WILSON & WALLIS,
Plaintiff's Attorneys.

Filed Dec. 29, 1877.

5 Circuit court of the United States, southern district of New York.

JOHN P. TREADWELL, PLAINTIFF,
against
THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company, defendants.

The plaintiff above named, by Wilson & Wallis, his attorneys, complains of the above-named defendants, and alleges:

That the said plaintiff, at and during the times hereinafter mentioned,

was and still is an attorney and counsellor at law, of the supreme court of the State of Massachusetts and of the courts of the United States, within the district of Massachusetts, and a resident of said State of Massachusetts.

Upon information and belief, that at and during the same times,
6 the said defendants were and still are corporations incorporated under and by virtue of the laws of the State of New York.

That heretofore, to wit, at divers times, between the 24th day of April, in the year 1874, and the 2nd day of October, in the year 1877, the said plaintiff, at the special employment, instance, and request of the said defendants and each of them, as well as of sundry other corporations which are not inhabitants of the southern district of New York or of the State of New York, nor found within said district or State, and are therefore not joined as defendants herein, did render and perform certain work, labor, and services in and about the defence of certain suits and actions brought against sundry of said corporations in the State and United States courts within said State and district of Massachusetts, by John L. Randall and J. Van Wart, as surviving partners of Taylor, Randall and Company, to recover certain alleged losses, to a very large amount, upon policies of insurance on property alleged to have been destroyed by fire at Boston, Massachusetts, during the month of November, in the year 1873, which suits and actions involved matters of interest and importance to all of the
7 said corporations, including the defendants herein, all of whom were insurers of the property so alleged to have been destroyed by fire, and all of whom, as well these defendants as the other corporations aforesaid, did at the time of plaintiff's said employment jointly and severally undertake, promise, and agree to and with said plaintiff to pay to said plaintiff for his said work, labor, and services, whatever the same should be fairly and reasonably worth.

That said plaintiff, during the periods aforesaid, devoted a large portion of his time to the defence of said suits and actions, and spared no efforts to make such defence successful, and by such efforts succeeded in establishing the fact that the alleged losses had not been incurred, and in obtaining judgment against the said claimants in all of said suits.

That the plaintiff's said services were fairly and reasonably worth the sum of fifteen thousand dollars.

That neither the whole of said sum nor any part thereof has ever been paid to said plaintiff although often demanded, and the whole thereof now remains justly due and owing from said defendants to plaintiff.

8 Wherefore said plaintiff demands judgment against the said defendants for fifteen thousand dollars, with interest from the first day of June, in the year 1877, besides the costs and disbursements in this action.

WILSON & WALLIS,
Plaintiff's Attorneys.

STATE OF MASSACHUSETTS,
County of Suffolk:

John P. Treadwell, being duly sworn, says that he is the plaintiff in the above-entitled action, that the foregoing complaint is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JOHN P. TREADWELL.

Sworn to before me this twenty-seventh day of September, 1878.
[L. S.] LEMUEL H. BABCOCK,
Notary Public.

9 It is consented that the plaintiff may file amended complaints & serve copy thereof on defendants' attorney.
New York, September 28, 1878.

N. B. HOXIE,
Def'ts' Att'y.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. John P. Treadwell, plaintiff, against The Adriatic Fire Insurance Company & others, defendants. Amended complaint. Wilson & Wallis, att'ys for pl'ff, 120 Broadway, N. Y. City. Filed Sep. 28, 1878.

10 U. S. circuit court, southern district of New York.

JOHN P. TREADWELL
against
THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics & Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and the Kings County Fire Insurance Company.

SIR: Please enter my appearance as attorney for the defendants in the above-entitled action.
Dated New York, January 7, 1878.
Yours, &c.,

N. B. HOXIE,
Attorney for Defendants, 67 William st., New York.

To JOHN I. DAVENPORT, Esq., *Clerk, &c.*

11 (Endorsed:) U. S. circuit court. John P. Treadwell ag'st The Adriatic and other fire insurance co's. Appearance. N. B. Hoxie, def'ts' att'y. To J. I. Davenport, esq., clerk. Filed Jan. 7, 1878.

United States circuit court, southern district of New York.

JOHN P. TREADWELL, PLAINTIFF,
against
THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and the Kings County Fire Insurance Company, defendants.

12 The answer of the defendants above named to the amended complaint of the plaintiff in the above-entitled action.

First. These defendants have not knowledge or information sufficient to form a belief whether or not the said plaintiff at and during the times

mentioned in said complaint was and still is an attorney and counsellor at law of the supreme court of Massachusetts, and of the courts of the United States within the district of Massachusetts, and a resident of said State of Massachusetts.

Second. These defendants admit that at and during the times mentioned in said complaint these defendants were and still are corporations incorporated under and by virtue of the laws of the State of New York.

Third. These defendants admit, upon information and belief, that certain suits were brought in the State of Massachusetts against certain insurance companies other than these defendants by John L. Randall and J. Van Wart, as surviving partners of an alleged firm of Taylor, Randall & Company, to recover certain alleged losses upon policies of insurance on property alleged to have been destroyed by fire at Boston,
13 Massachusetts, during the month of November, 1873, and that said suits involved matters of interest to these defendants and other corporations that were insurers of said alleged firm of Taylor, Randall and Company.

Fourth. These defendants have not knowledge or information sufficient to form a belief whether or not the said plaintiff, during the period mentioned in said complaint, devoted a large portion of his time to the defence of said suits, and spared no effort to make such defence successful; nor whether or not said plaintiff succeeded in establishing the fact that the alleged losses had not been incurred, and in obtaining judgment against said claimants in all of said suits.

Fifth. These defendants admit that neither the whole of the sum of fifteen thousand dollars mentioned in said complaint, or any part thereof, has ever been paid to said plaintiff by these defendants.

Sixth. These defendants specifically deny, upon information and belief, each and every other allegation in said complaint contained.

14 Seventh. These defendants allege, on information and belief, that for the labor and services performed and rendered by said plaintiff in said suits brought in the State of Massachusetts the said plaintiff has been paid and compensated by the insurance companies against whom said suits were so brought, or by some of said companies.

N. B. HOXIE,
Attorney for Defendants.

Office & post-office address, 67 William st., New York.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

James R. Lott, being duly sworn, says that he is an officer, to wit, the president of The Mechanics and Traders' Fire Insurance Company, one of the defendants in this action; that the foregoing answer is true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

JAS. R. LOTT.

Sworn before me this 8th day of February, 1879.

[L. S.] HY. H. SPELMAN,
Notary Public, (11), *N. Y. County.*

15 (Endorsed:) U. S. circuit court, south. dist. of N. Y. John L.

Treadwell against The Adriatic Fire Insurance Co. and others. Answer. N. B. Hoxie, def'ts att'y, 67 William street, N. York. Filed Feb. 10, 1879.

At a stated term of the circuit court of the United States for the southern district of New York, held at the court-house, in the city of New York, on the 5th day of December, 1879.

Present, Hon. William J. Wallace, judge.

16 JOHN R. TREADWELL
against
THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, & The Kings County Fire Insurance Company.

On reading and filing the annexed consent of N. B. Hoxie, esq., defendant's attorney, and on motion of Man & Parson, attorneys—

It is ordered that Man & Parson be, and they hereby are, substituted as attorney for the defendants, in place and stead of the said N. B. Hoxie.

W. J. WALLACE.

U. S. circuit court, southern district of New York.

JOHN P. TREADWELL
against
THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics & Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and the Kings County Fire Insurance Company.

17 I hereby consent that Man & Parsons be substituted in my place and stead as attorneys for the defendants in the above-entitled action.

Dated New York, November 18th, 1879.

N. B. HOXIE,
Defendants' Attorney.

(Endorsed:) U. S. circuit court, southern district of New York. John P. Treadwell against The Adriatic Fire Insurance Company & others. Order and consent for substitution. Man & Parson, att'ys, 56 Wall street, N. Y. Filed Dec. 5, 1879.

18 We, the undersigned jury, find for the plaintiff in the sum of eight thousand ($8,000.00) dollars.

U. S. circuit court jury room, N. Y., Dec. 11, 1879.

ISAAC C. NOE.
JOHN W. ANDREAS.
GEORGE A. ROBBINS.
WILLIAM H. DENNING.
ALEXANDER DENHAM.
DAVID S. DODD.
FRED. HABERSHAW.
A. C. KINGSLAND, JR.
WM. P. TALLBOYS.
JAMES BENKARD.
CHAS. H. LEEDS.
W. J. DAVENPORT.

(Endorsed:) John P. Treadwell vs. The Adriatic Fire Ins. Co. et als. Verdict. Filed in open court, Dec. 12, 1879.

19 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Friday, the twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Wm. J. Wallace, judge.

JOHN P. TREADWELL
vs.
THE ADRIATIC FIRE INSURANCE COMPANY et als.

The jurors sworn in the above-entitled cause come into court and present to the court the following verdict in said cause:

"We, the undersigned jury, find for the plaintiff in the sum of eight thousand ($8,000.00) dollars.

ISAAC C. NOE.
JOHN W. ANDREAS.
GEORGE A. ROBBINS.
WILLIAM H. DUNNING.
ALEXANDER DUNHAM.
DAVID S. DODD.
20 FRED. HABERSHAW.
A. C. KINGSLAND, JR.
WM. P. TALLBOYS.
JAMES BENKARD.
CHARLES H. LEEDS.
W. J. DAVENPORT.

On motion of Mr. Parsons, ordered that the defendants have twenty days within which to prepare and serve a bill of exceptions herein.

(Endorsed:) C. C. of the U. S., S. D. of New York. John P. Tread-

well vs. The Adriatic Fire Insurance Company et als. Transcript from minutes.

21 *Judgment June 17th.*

United States circuit court, southern district of New York.

JOHN P. TREADWELL
against
THE ADRIATIC FIRE INSURANCE COMPANY, THE Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company.

The issues in this action having been brought on for trial before Mr. Justice William J. Wallace and a jury at a stated term of this court, held on the ninth day of December, in the year 1879, and the issues having been tried, and a verdict for the plaintiff having been duly rendered on the twelfth day of said December for the sum of eight thousand dollars, and the interest on said verdict from said twelfth day of December to the date of the entry of this judgment having been duly computed by the clerk of this court at the sum of two hundred and fifty $\frac{67}{100}$ dollars,

22 and plaintiff's costs having been duly adjusted by said clerk on notice at the sum of forty-three $\frac{25}{100}$ dollars:

Now, on motion of Wilson & Wallis, attorneys for the plaintiff, it is ordered, adjudged, and decreed that John B. Treadwell, the plaintiff herein, recover of The Adriatic Fire Insurance Company, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company, the defendants herein, the sum of eight thousand dollars found by the jury, with two hundred and fifty $\frac{67}{100}$ dollars interest thereon, as aforesaid, together with forty-three $\frac{25}{100}$ dollars cost, amounting in the aggregate to the sum of eight thousand two hundred and ninety-three $\frac{92}{100}$ dollars.

Judgment signed June 17th, 1880.

J. M. DENEL,
D'y Cl'k.

23 (Endorsed:) United States circuit court, southern district of New York. John B. Treadwell ag'st The Adriatic Fire Insurance Company & others. Judgment roll. Wilson & Wallis, pl'ff's att'ys, 48 Wall st., N. Y. City. Filed Jun. 17, 1880.

24 *Bill of exceptions.*

United States circuit court, southern district of New York.

JOHN P. TREADWELL
against
THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and the Kings County Fire Insurance Company.

This action came on to be tried on December 9, 1879, before Mr. Justice

Wallace, district judge for the northern district of New York, sitting as circuit judge, and a jury, at the United States court-rooms in the city of New York, in the southern district of New York.

The plaintiff appeared by Messrs. William G. Wilson and Luther R. Marsh, the defendants by Mr. John E. Parsons.

LISPENARD S. JORDAN, being called as a witness for the plaintiff and sworn, testified:

I am insurance agent and broker; have been in the business twenty-three years. Remember claims against insurance companies by the
25 alleged firm of Taylor, Randall & Co., in reference to a fire at 41 Central Wharf, Boston.

The defendants and other companies executed the following agreement:

IN RE TAYLOR, RANDALL & CO.
versus
THE ST. PAUL FIRE MARINE INSURANCE CO., et als.

The undersigned insurance companies, having policies outstanding issued to Taylor, Randall & Co., upon property at Central Wharf, Boston, upon which claims have been made against said companies, do in consideration of one dollar by each paid to the other, and divers other good and valuable considerations, mutually covenant and agree to and with each other as follows, that is to say: the said companies will unite in resisting the claim made upon said policies, and on each thereof, and in the defence of any and all suits and legal proceedings that have been or may be instituted against any of said companies upon any of said policies, and will, when and as required by the committee hereinafter mentioned, contribute to and pay the costs, fees, and expenses of said suits and proceedings pro
26 rata; that is to say, each company shall pay such proportion of said costs, fees, and expenses as the amount insured by said company shall bear to the whole amount insured on said property by all the companies subscribing to this agreement. The management of and conduct of said resistance to said claims and defence of said suits and proceedings shall be and is fully entrusted to and devolved upon a committee to be composed of W. H. Brazier and James R. Lott, of the city of New York; Charles W. Sproat, of the city of Boston; L. S. Jordan, of the city of Boston, which committee shall have full power and authority to employ counsel and attorneys to appear for said companies, and each thereof, and defend said suits and legal proceedings, and to employ other persons for other services relative thereto, and to assess upon and demand and receive from such companies from time to time as such committee shall deem proper, such sum or sums of money for the compensation of such counsel and attorneys, and such other persons and all other expenses of such de-
27 fence of said suits as said committee shall deem necessary and expedient, such assessment upon and payment by each of said companies to be pro rata, as above mentioned.

Each and every of said companies shall fully and faithfully adhere to this agreement, and shall refrain from any act or proceedings in reference to such claims or suit or the defense thereof that can or may in anywise defeat, obstruct, or interfere with the acts or proceedings of said committee

relative thereto, and shall at all times furnish to said committee any and all papers, information, and assistance in and about such management and conduct of such resistance and defence as may be in the possession or power of said companies respectively, and as may be desired by said committee.

In witness whereof the said insurance companies have subscribed this agreement this twenty-fourth day of April, eighteen hundred and seventy-four.

In presence of—

FRANKLIN INSURANCE CO., OF INDIANAPOLIS,
GERMAN INSURANCE CO., ERIE.,
P. C. W. SPROAT.
ST. PAUL FIRE & MARINE INSURANCE CO.,
28 JORDAN LOVETT & CO., *Agents.*
FRANKLIN INSURANCE CO., OF WHEELING,
JORDAN & NITCHIE, *Attorney'.*
MISSISSIPPI VALLEY INSURANCE CO.,
W. H. BRAZIER.
MECHANICS' & TRADERS' INSURANCE CO., N. Y.,
JAS. R. LOTT,
President Kings County Fire Insurance Co.
E. F. BACHOEUR.
LAFAYETTE FIRE INSURANCE CO.,
H. GIROUX, *President.*
ADRIATIC FIRE INSURANCE CO.,
CHAS. D. HARTSHORN, *Secretary.*
SECURITY INSURANCE CO.,
E. F. MERRILL, *Assistant Secretary.*
BEN. FRANKLIN INSURANCE CO., OF ALLEGHANY, PENN.,
GEO. D. RIDDLE, *Secretary.*
HIBERNIAN MUTUAL FIRE INSURANCE CO., NEWARK,
JOHN B. RICHMOND, *President.*
GLOBE INSURANCE CO, OF CHICAGO, ILL.,
W. B. BARTLETT, *Attorney.*
CLAY INSURANCE CO.,
Per E. H. MARIN, *Secretary.*
OSWEGO & ONONDAGO INSURANCE COMPANY,
By SAMUEL AVERY, *Secretary.*

It was prepared by my bookkeeper under my directions, and I obtained the signatures. After the paper was executed, I, as one of the committee, employed W. Treadwell, plaintiff, to defend any suits that should be brought.

Suits were brought; I only know of those that were tried in Boston. I understand that suits were brought in other places. Mr. Tread-
29 well appeared in certain suits that were brought in Massachusetts, and acted in them until their conclusion under my direction, and with the knowledge of the other members of the committee. I appointed Mr. Treadwell in concert with Mr. Sproat, in Boston, and with the approval of Mr. Brazier.

I had repeated interviews with Mr. Lott at his office in New York, where I gave him the fullest account of what was done and being done from time to time.

Mr. Brazier came to Boston, and advised me that he approved heartily of all that we had done, and he went and had a number of interviews with Mr. Treadwell with me.

Being cross-examined, he said:

Mr. Treadwell was a friend of mine. We began to talk about this case very soon after the fire; the fire was in November, 1873. Some of the conversations were at Mr. Treadwell's office. I was agent for the St. Paul Insurance Company, and the Franklin, of Wheeling, Ohio, which had risks upon the property of Taylor, Randall & Co.

30 Taylor, Randall & Co., made a claim against my companies, I presume within a month or so after the fire, and served the ordinary proofs of loss.

Suits were brought in Boston against the Oswego, and Onondaga, and the Franklin, of Indianapolis; I forget the others. I never heard of a suit in Boston against either of the defendant companies; a suit was tried in Boston, only one to my knowledge; I don't know how many were included, I only know of one trial. I presume that the Oswego and Onondaga Company and the Franklin, of Indianapolis, were defendants. There were four or five joined in that suit, I believe. The St. Paul, one of my companies, was sued there. The papers were served at my office, and I presume they were sent with my knowledge to Mr. Treadwell.

Q. Give the names of all the companies that were interested in this risk, and the amount of the policy in each case?

A. German, of Erie, $5,000; Kings County, New York, $5,000; Mississippi Valley, of Memphis, $5,000; Milville, of New Jersey, $5,000; St. Paul, Minnesota, $2,500; Hibernia, of Newark, $2,500; Oswego & Onond'ga, of New York, $2,500; Lafayette, New York, $2,500;

31 Mechanics & Traders', $2,500; Franklin, of Wheeling, $2,500; Hudson, of New Jersey, $2,500; Clay, of Kentucky, $2,500; Farragut, of New York, $2,500; Security, of New Haven, $2,500; Globe, of Chicago, $2,500; Great Western, $2,500; Allemania, of Pittsburgh, $2,500; Atlantic and Pacific, of Chicago, $2,500; Franklin, of Indianapolis, $2,500; Ben. Franklin, of Pennsylvania, $2,500; I think that makes $62,500.

The C. W. Sproat who signed the agreement for the Franklin Insurance Company, of Indianapolis, and the German Insurance Company, of Erie, Pennsylvania, was a member of the committee. He is in Taunton, Massachusetts; I have not seen him in nearly two years; he was nearly blind when he wrote that; he has been out of business more than two years. After this paper I heard that his mind was seriously affected, and afterwards heard it denied; I don't know the fact.

Jordan, Lovett & Co., who signed for the St. Paul Company, is my firm; Jordan & Nitchie, who signed for the Franklin Insurance Company, of Wheeling, is also a firm of which I was a member; Jordan & Nitchie was my New York firm; Mr. Brazier, the third member of the

32 committee, who signed for the Mississippi Valley Company is not now living.

Q. Fix as nearly as you can when your first interview with Mr. Lott was?

A. I may have had an interview with him in 1874, but I do not remember when it was.

Q. Was there ever a time when these four gentlemen, Mr. Brazier, Mr. Sproat, yourself and Mr. Lott, met together in reference to this business?

A. I don't think Mr. Sproat ever did, because he was an invalid at that time.

I think the first meeting took place at the office of the board of underwriters in New York, at which Mr. Lott and Mr. Giroux were present; I think Mr. Brazier and I were present at that meeting. All the companies were invited to be present; there were six or seven there.

I never paid anything to Mr. Treadwell on account of this claim. He has made no demand upon me, except in the shape of his bill, which he sent to the committee, I think first in May, 1879.

Three or four companies have failed; the Atlantic and Pacific,
33 the German, of Erie, the Globe and the Great Western; one of the others has wound up, I believe the Oswego and Onondaga.

I came on to New York at one time and told Mr. Lott that a gentleman was going to Europe; that it was stated that one of the claimants had died there, which I did not believe was true; and I said that if the companies would contribute to the necessary expense of proving the death of that man Mr. Treadwell would make the expenditure and take the time to do it.

Q. What did the companies say in reference to that?

A. They said that they would not pay anything.

JOHN P. TREADWELL, being called and examined on his own behalf, testified:

I reside in Boston; am a lawyer, practicing in the courts of Massachusetts; I was the only lawyer for the defence in the Massachusetts suits; tried all the cases that were tried; there never was but one trial, and that was mine.

The litigation in Massachusetts began early in 1874. The fire
34 took place, I think, on November 3, 1873. Shortly after a suit was brought against two or three companies; I think the St. Paul and Franklin and the Farragut. The summons were sent to me of two of those actions. Three or four actions were brought about the same time which were not sent to me at the start. Appearances were entered by me in the two or three cases that were sent to me, and in the other cases by a gentleman now dead, named Bailey Sanford. Mr. Jordan sent me the first papers. Afterwards Mr. Sproat handed me over the papers of the companies that he represented, that is that Mr. Sanford had represented. I was then the sole lawyer representing all the companies sued in Boston. They were the St. Paul, the Franklin, the Farragut, the Clay, and the Globe; the Oswego and Onondaga came in afterwards. The Farragut papers I got from Mr. Jordan.

A consultation then took place between Mr. Sproat and Mr. Jordan and myself about my taking charge of all the cases. They told me that Randall had sued all the companies in Massachusetts that had attorneys to accept service there and that the remaining companies had been
35 sued in other States—these defendants in New York—and that as the fire was located in Boston and all the evidence was in Boston, the fight would take place there, and they showed me the agreement. I accepted the invitation to become the attorney of the companies.

They then had a talk with me as to whether I should be able to discharge my duties satisfactorily in so heavy a case. I mentioned the name of one of the leading advocates at our bar, Mr. Sohier, and they instructed me to see Mr. Sohier. He went so far as to criticize the pleadings and to make various suggestions, but he wanted his fee in advance. Mr. Jordan sent but could not get any money, so I started alone.

After the cases had been some time in court the counsel for the plaintiffs thought they had made a mistake, and so they became non-suited and a new set of suits were started. I then opened a correspondence with the companies that were in Boston about removing the cases to the Federal court. I removed some of them. Quite a sharp contest took
36 place there, the plaintiffs objecting to the removing, but I prevailed, and the cases were removed.

About the time of the removal of the cases I was in intimate and daily intercourse with a man named Woodward, a dealer in paints and oils, who had been employed by the insurance companies to assist in adjusting the loss and to determine the salvage.

He was at every hearing, gave me information about essential oils, and the articles the plaintiffs said they had. My interviews commenced with him early, and were of the most laborious description.

The witness then went on to state the nature of the claim and of the defence, and gave a long and full account of the services rendered, including a large amount of time and labor spent in investigating the facts, finding witnesses, arranging evidence, and otherwise making preparation for the hearings.

He proceeded: We had somewhere in the neighbourhood of fifty witnesses on our side, and I made the number of hearings to be forty;
37 that means actually before the judges—it may have been three or four days less, but my books showed forty—I think, when we were actually engaged more or less of the day in the trial of the case.

During this time I had visits from gentlemen in New York. One was Mr. Brazier, who has been spoken of here. He said he was a member of the committee, and that he represented $27,000 of the New York insurance. He stayed all day, in and out, and I gave him my whole time. That was when we had got Randall in the bad part of his case where he was being sweated badly, and we had got where we could almost be sure of success, and that will bring it about the last of the year 1876, I should think—it might have been early in 1877. I told him what I had done and what my law points were going to be. One was that the goods had been smuggled. I gave Mr. Brazier my law and all my facts.

The defendants know when Mr. Brazier came. It was about that time, for he informed me he was going to see Mr. Randall for the purpose of effecting a settlement with some of the companies; using the pro-
38 gress I had made, with Randall pointing out what I was going to do with him, and getting his policies out. I think that was my only interview with Mr. Brazier, but Mr. Brazier told me at the time that he was going to throw himself a little more into the case and help me on one point, and that was to discover who this Taylor was.

Mr. Brazier afterwards wrote me a letter about it. That is all I ever knew of Mr. Brazier.

Another gentleman visited me in Boston, stating that he was counsel for

one or more of these defendant companies. His name was Strong, a member of the New York bar, who entered an appearance here for some companies. Strong came to see me to see how I was getting along; whether I was likely to win or be defeated. That was perhaps in the fall of 1876, when the suit was fully in progress, and near its end. I informed him of my evidence—what I had proved, what I was going to prove, what my points of law were, and the condition of the plaintiffs and the prospects of the suit; and he stayed and heard me try the case one morning. He afterwards came to New York, and sent me copies of indictments
39 against a New York man, who had testified in the case for the plaintiffs. Mr. Strong sent me a small bill for these last services.

The cases came up in the circuit court first. The counsel for the plaintiff moved on by asking for an auditor, after which a trial can be had by jury. I opposed it. The judge decided that the case should go to an auditor, and he appointed Judge Hurd.

The hearings opened before Judge Hurd, and after the plaintiffs had put in their case, I proceeded with the cross-examination of the plaintiff, which lasted, I found by my memoranda, fourteen solid days. It did not go along very many days before he got frightened, and the counsel proposed that we give up the auditor's hearing, and agree upon a reference. I said yes, if Judge Hurd could be one of the committee. He was appointed, and two others were taken, the three to act, under a rule of the circuit court, as judges of the law and the facts, and their finding to be final. (The witness described at length his labor in securing suitable referees.) It was agreed that the evidence that had been taken should
40 be read to the board of reference. It occupied four days to read the evidence before we could start again where we left off before the auditor. Then we proceeded with our case.

The witness proceeded to state further what took place upon the reference. He proceeded: I had forty or fifty witnesses. The experts were most troublesome, because they would not come. They had about forty or fifty also.

Randall was defeated, absolutely, a verdict being given against him.

I have never been paid anything for those services by any parties to the agreement. I claim $15,000 for my three or four years' work; it is a fair and reasonable value; I have been at the bar for almost twenty years; $100 is considered a proper and customary charge in Boston for each day of the actual trial of a case of importance; I kept only a rough record of the services I performed, and with some difficulty made out an itemized bill; we do not usually render itemized bills in Boston, but charge a sum in gross; I had no client to assist me in finding witnesses or prepar-
41 ing the defense of the litigation, and had to do this personally.

The verdict was on May 11, 1877; after that I went into the courts and asked for judgment upon the award.

I believe it made no difference whom I sued, because by the terms of the agreement the defendants had the right of contribution.

I want to state that I did not intend to charge these companies and any other companies the same, but I understood it was a joint liability and they could get it back from others.

Q. What proportion of your time during this period was taken up by your labors in this case, your preparation in it; were you engaged in many other cases during the same time?

A. I should think about one-half, sir; I should think that would be about a fair estimate of my time—about one-half.

The further cross-examination of the plaintiff being here suspended, the witness LISPENARD S. JORDAN, was recalled for further cross-
42 examination, and testified to the following correspondence, which was proved and put in evidence.

BOSTON, *Feb'y 16th*, 1875.

LAFAYETTE FIRE INS'CE CO.

GENTLEMEN: As you know, John L. Randall is laying out his whole strength to secure what, if he is successful, will be a great sum of money, by means of suits at law brought against a great many co's in the name of Taylor, Randall & Co., upon a claim for loss by fire, which claim is a perfectly transparent fraud. A few of the co's, constituting only a small number of those who have insured him, have been sued in Massachusetts. The cost for legal counsel and for the obtaining of very numerous facts necessary for the defence be altogether disproportionate to the amount for which, at the worst, the few co's sued in Mass. could be held liable.

The evidence to be got is mostly located about here where the fire itself took place.

The stenographic report of the plaintiff's testimony will be very costly, as such thing always are. The counsel here propose to send out commissions to take depositions in Germany in order to explode the Van Wart part of the fraud. Van Wart, the plaintiff says, is his partner, and one of the assured, and now lives in Bavaria, all of which is untrue.
43 All of this material you must have and you must use, or you cannot resist successfully his determined attack, and this no matter where he sues you. The few co's sued in this State are doubtful what course to pursue in view of the large cost of defence and the small amount they have at stake. If you will immediately respond by sending the sum of $200 to me at this time you will assist very much in settling what course the companies sued here will take, and it will be received upon the express condition that if the defence does not go on the money shall be returned to you, and upon the further conditions that if the defence does proceed you shall have access to and full use of all the evidence and material obtained by us of every character.

Yours, truly,

L. S. JORDAN,
One of the Committee.

LAFAYETTE FIRE INSURANCE CO.,
New York, Feb'y 20th, 1875.

L. S. JORDAN, Esq., *Boston.*

DEAR SIR: Yours of the 16th instant was duly received, contents noted. After a conference with the members of the committee here, Messrs. Brazier and Lott, we deem it inexpedient to advance any more money to defend the Boston companies.
44 We have already disbursed some $75 on a policy of $2,500, and are moreover sued here, which suit, of course, we must defend alone.

We have already paid Mr. Strong, of counsel here, $37.50 as a retainer, to put in our answer, and we are also advised that there is evidence enough on hand to upset the claim.

In view of all these facts and theories I do not feel authorized to make said disbursement. Should, however, the Boston co's gain their suits, thro' any evidence obtained by them exclusively, I have no doubt that all the N. Y. co's will be but too glad to share the expense pro rata of procuring the same.

Yours, truly,

H. GIROUX, *Prest.*

The following is a copy of the first bill of Mr. Treadwell:

The original was sent to me by Mr. Treadwell, and I sent copies to the different companies. This is the copy which I sent to the Lafayette Company:

BOSTON, *May 16th*, 1877.

L. S. Jordan, esq., one of the committee of defence in the suit of Taylor, Randall & Co., against various insurance companies, subscribers
45 *to contract for defence, dated April 24th, 1874, to John R. Treadwell, Dr., for himself and assistant in the trial, lasting three years and ending in a final judgment for defendants.*

The amount due and claimed by plaintiffs, on all policies with 6 % interest to date of award, being $75,625, inclusive of $1,000 cash.

Expenses, witnesses, &c.....	$16,000
One-half the referee's fees paid, the other half having been paid by plaintiff.....	635
	$16,625

Received payment.

It was enclosed with this letter:

BOSTON, *May 24th*, 1877.

To the Lafayette Fire Insurance Co.:

GENTLEMEN: Herewith please find the account of J. P. Treadwell, esq., of Boston, for the entire expense of conducting the test case of Taylor, Randall & Co. against sundry insurance companies, yourselves among others. The result being the judgment of the circuit court of the United States for this district, is shown in the award of the referees
46 herein enclosed, and is final and beyond appeal. Your share of the bill is $978.52. Please remit at once agreeably with the terms of the contract for defence between you and the co's, dated April 24th, 1874, and to my order.

Very respectfully,

L. S. JORDAN,
One of the Committee named in the Contract.

The following is a letter received by me from Mr. Treadwell at the time of its date:

BOSTON, *Jan. 2nd*, 1877.

L. S. JORDAN, Esq.,

One of the Committee of Defence in the Taylor, Randall & Co. suits, under written contract signed by the companies, dated April 24, 1874:

DEAR SIR: I deem it my duty, as the sole counsel of the companies sued in this State, to lay before you, as one of the above committee at this time, the following facts and suggestions: Agreeably with the terms of the above-named contract, signed by the Lafayette In'ce Co. and others, agreeing to unitedly resist the claim of T., R. & Co. and unitedly to defend against it those companies which were sued in Massachusetts, and which were the ones that Randall selected for active litigation,
47 and upon the determination of whose cases all the other suits depend, we have vigorously and unremittingly defended in court, in a trial of very great length, and have brought matters to that point where judgment for the defendants is about a foregone conclusion. We learn that the Lafayette In'ce Co. has settled with the plaintiff, by the payment to him of less than one-half of the account due on their policy (if anything be due), and we congratulate them upon the large benefit they have secured by the pounding that we have given the plaintiff here. Without affecting the rights of any company as between them and the Lafayette In'ce Co., in relation to the deviation of the Lafayette In'ce Co. from the express words of the contract regarding not settling with the plaintiff, we address to your attention, now, that clause of the contract which provides that each subscribing company pay its proportionate part of the "costs, fees, and expenses" of the trial. The expenses have necessarily been large—reference fees, counsel, stenographing, witnesses from a distance, &c.—and the proper time to determine how much of it the Lafayette In'ce Co. is to pay might be said to be at the termination of the litigation, which will be some time hence. So far as can be roughly
48 estimated now, the proportion which that company must pay, of the costs, fees, and expenses to date only, is $250. If you deem it prudent I advise you to suggest to the Lafayette In'ce Co. to pay the above-mentioned sum of money now, in full settlement and discharge of all liability on them growing out of the contract in the past or in the future. The other companies can readily be made at this time to see the advantage of releasing the Lafayette In'ce Co. on those terms, the advantage being a supply of ready cash for the current expenses, which will avoid the unpleasant necessity of an assessment upon them at the present time.

Very respectfully,

JOHN P. TREADWELL.

JOHN P. TREADWELL, being recalled for cross-examination, testified:

During the time covered by these services I was carrying on a general law practice in Boston—an active practice, having my time occupied with my business—very much so.

I first heard about the fire from Mr. Jordan. I made Mr. Jordan's acquaintance the 7th of November or December, 1870. I was Mr. Jor-

dan's lawyer for the law business which grew out of his Boston in-
49 surance agency, when he could control it. I should say that it was about the beginning of January, 1874, that Mr. Jordan first came to me about this business. It was when appearances had to be entered in these actions, and I should think it was soon after the first Tuesday in January. Perhaps I am wrong.

I have no doubt I had something to do with these cases before the agreement of April 24, 1874. I think there is no doubt that Mr. Jordan is the first man who came to me in the interest of the defense of this litigation, prior to that paper. He came two or three months prior to the paper. When he first came he brought two of the copies of the writs which had been served upon him; those served upon the St. Paul and the Farragut. The Farragut never became a party to the agreement of April 24, 1874.

I think the names of Mr. Sproat's companies were the Globe and the Franklin, of Indianapolis. The Oswego and Onondaga I am not quite sure of. He had control of the claim, and he put that in with the others. The Globe was a Chicago company; it failed.

50 The first *h*earing before Judge Hurd was at the latter part of 1874, or the early part of 1875, I think. The reference commenced in September, 1876. I think the trial ended May 11, 1877. The referees were paid $1,300. I paid one-half, $650, and the plaintiffs the other $650. I cannot recollect any further payment to Judge Hurd as auditor.

When anything took place before the board of audit and before the referees Judge Hurd was always in his place and at his duty. There were thirty-five days when evidence was put in, and five more when we had a hearing.

Q. Is not $100 a day for services upon a reference a pretty extreme charge in Boston?

A. It would be, unless a lawyer was well established and had large cases.

Q. Cannot you for $50 a day employ the very best talent in Boston for services of this character?

A. Well, sir, I do not know. I don't think anybody goes at us in that way. I do not know but that a lawyer may be hired for $60 or $50 or $40 a day; but I do not think the services of good lawyers are employed like good horses. When the first case came to me there came proof
51 of loss. They being shown to anybody skilled in the business, it was perfectly apparent that the whole thin*k* was a transparent swindle. There was not a man looked at it but said it was a fraud.

Q. Who employed Mr. Woodward?

A. That is what he doesn't know. He has not got any money yet. He sued the security of New Haven, and it has not got to trial yet, as I know. I do not think Mr. Jordan employed him. I think he was in the case before Mr. Jordan had anything to do with it.

Q. To whom did you report that Mr. Sohier wished a fee?

A. To Mr. Sproat and Mr. Jordan.

Q. With the exception of one interview with Mr. Brazier and one interview with Mr. Strong, have you ever communicated with any of these gentlemen connected with any of the companies or the committee, except Mr. Jordan and Mr. Sproat?

A. I cannot say that I have. No service was rendered by me from beginning to end which was not necessary and essential to the defense of the

particular companies represented by Mr. Sproat and Mr. Jordan.
52 I was in constant communication with Mr. Jordan during the whole period. I presume I made a request upon him once to try and get some money out of the New York companies. I was always asking him. I could not get any anyway. He told me he could not get any money. I think this was in the course of the first month after the verdict. I had never heard any objection of the New York companies to paying for any services until after the decision.

Q. You said you were trying to get money and never were paid. I want to know when you began those efforts and the companies would not pay.

A. I do not recollect any effort after Mr. Sohier tried to get some money at the start, until after the verdict.

Q. I want to find out whether any money came from New York at any time.

A. Never from New York that I remember. There was a little money paid when I would write to these companies in these litigations for some cash to pay officers, to pay Judge Hurd and other officers, and they sent checks for those amounts. Altogether it used up, perhaps, from the beginning of the case to the end, ten or twelve hundred dollars that
53 did not come from New York. Those expenses were paid by the companies actually in litigation in Boston, upon my representation that the litigation must otherwise stop. I did not from the beginning to the end communicate directly to either of the companies now being sued by me that I was carrying on this litigation and expected them to pay for it.

DECEMBER 10, 1879.

John P. Treadwell, cross-examined, resumed:

The companies referred to in my complaint as those at whose request I was employed are those whose names are signed to the agreement. The papers in the Sproat suits came to my office some time in December, 1874; down to that time those suits were in charge of Bailey Sanford, a relative of Mr. Sproat. I had charge of no suits before Mr. Sproat brought his, except those Jordan had sent me the papers in. All the cases tried before Judge Hurd were tried together. At the time Mr. Sohier declined to be retained because no fee was paid to him, it might have been from
54 Mr. Jordan and it might have been from Mr. Sproat that I learned that money was not coming from anybody. I don't remember from whom I learned it. It was March, 1875, that the auditor first sat to take testimony. The reference began in September, 1876, it lasted till May, 1877.

Defendant's Exhibit Number 2 being read, the witness said:

Mr. Jordan communicated with his people, his constituents, the people that put him on the committee at the time of the Sohier matter, without my instrumentality at all. I don't know but I suppose he had communicated with his people because he said he could not pay lawyers' fees afterwards. He could not get the money I suppose.

A letter dated October 8, 1874, being shown the witness, he says: This is in the handwriting of Mr. Jordan.

It is read in evidence as follows:

BOSTON, *Oct.* 8, 1874.

MECHANICS & TRADERS' INS. CO.:

One of the committee having charge of the Taylor, Randall & Co. case expended for detectives & appraisers, in Dec. & Jan. last, about
55 $400 which should be paid to him by the co's. It is not proposed to expend anything further, unless it shall be absolutely necessary, until the matter is closed up. If you will send your check for $20, payable to order of C. W. Sproat, or ourselves, the proper receipt will be sent you.

Yours, truly,

JORDAN, LOVETT & CO.

About a thousand dollars came from St. Paul, and the Franklin, and the Oswego, and the Farragut; it came and I had to disburse it. The $400 for detectives and appraisers was before my time.

I first learned that the New York suits were or would be settled soon after Mr. Brazier came to see me.

A letter dated November 17, 1876, from Mr. Brazier, being shown to the witness by his counsel, he says:

That was about the time that Brazier told me he had settled the New York suits. A considerable amount of the services were subsequent to November 17, 1876. The entire insurance was $62,500; companies representing $17,500 did not sign.

A letter from the plaintiff to Mr. Jordan, dated June 23, 1877,
56 was here put in evidence.

BOSTON, *June* 23, 1877.

J. M. TOMPKINS, Esq.,
Sec'y Mechanics' & Traders' Ins. Co.:

DEAR SIR: Yours of 2nd was duly rec'd. The following is a copy of the letter I have received from Mr. Treadwell in answer to my request for a bill of items:

L. S. JORDAN, Esq.:

DEAR SIR: I cannot respond intelligently to your calls for items of my bill. Consultations, frequent searches for a cloud of witnesses, interminable interviews with witnesses, searches for Randall's pals, trial of the case 40 days, motions in court, examinations of law questions, pleadings, &c., arguments, &c., extending over three years, is one item, & is indivisible. There were times when in 60 minutes I earned one-half of my whole bill. Although it is unprofessional here to make our bills in items, for you I would readily do it if I could, but no man could do it.

Yours, truly,

J. P. TREADWELL.

FRANCIS W. HURD, called on behalf of the plaintiff, being duly sworn, testified:

I reside in Boston; am by profession a counsellor at law; was
57 admitted to the bar in 1837, and have been in practice ever since.

I was the auditor, and afterwards one of the referees before whom the litigation of Taylor, Randall & Co. against the insurance companies was

brought. The first hearing before me as auditor was on March 15, 1875. Hearings took place up to about the 1st of July, and I think there were six hearings of the whole of a day each, and six hearings of fractions of days, perhaps an hour each; and perhaps some of them would be a forenoon and some an afternoon, but there were six whole days and six fractions of days. About the first of July these hearings ceased. Nothing more was done before me until the summer of 1876. Our hearings commenced as referees on the 6th of September, 1876; that is, that was the first day they began putting in new evidence. Those hearings continued until January 24, 1877. There were twenty whole days occupied before the referees and three fractions of days. By a whole day I mean from ten to four o'clock; sometimes longer.

58 The plaintiff was in attendance upon the hearings before me without any counsel. He had sole management on behalf of the defendants. There were three companies in which awards were made.

I have heard the testimony which the plaintiff gave here yesterday and to-day in regard to the services he rendered in preparation for these hearings.

Q. From the information that that affords, and from your own knowledge of what took place before yourself, can you give us what in your judgment would be fair compensation for the plaintiff's services?

A. Regarding this as one suit in which the aggregate amount was involved of the insurance, and regarding the corporations as having common interest, I think that what the plaintiff charges is not unreasonable. The case was exceedingly well tried on both sides, and very skillfully managed. The case was such that there was much more field for the exhibition of skill by the defendants than by the plaintiff.

Q. You think the sum of $15,000 a reasonable compensation for the plaintiff's services as described?

59 A. I do not think it is unreasonable. I think, considering the elements of the case, it is fair and reasonable; I think it is a full charge, but fair and reasonable under the circumstances of the case.

Being cross-examined, he testified:

I did not see any services rendered by Mr. Treadwell, except such as was rendered, first, upon the audit, and then upon the reference. The same services get larger pay for older than for younger men. The leaders of the bar would not be more than ten or fifteen, perhaps.

Q. What, at the time these services were rendered by Mr. Treadwell, was a fair annual professional income for a gentleman of the position of Mr. Treadwell at the Boston bar?

(Objected to. Objection sustained. Exception by defendants.)

The length of time the service occupies is one element in fixing the charge.

By the COURT:

Q. Assuming that the companies interested in this litigation were interested to the extent of $45,000, and that while the litigation in Boston would not be conclusive in their favor it would go a great ways

60 towards determining practically the question of liability, and assuming that the plaintiff had the entire responsibility of procuring

the evidences in the case; indulging these assumptions, together with your observation as to the length of time occupied, the way in which the case was conducted, &c., and excluding the testimony of the plaintiff, what would you say would be a fair compensation for those services?

A. Well, sir, taking into consideration one other element which lies in my mind as being important, and that is the importance to the insurance companies of exposing this fraud, for if this plaintiff had succeeded in establishing this fraud, and collected fifty or sixty thousand dollars, he might have gone on and done the same thing again, which, in my mind, is an important element to be considered in fixing the value of the service. In this particular case I should have put the bill at $12,000, excluding the testimony of what the plaintiff has stated.

Q. But including the consideration of the importance of the case as affecting other companies than those directly involved?

A. Yes, sir.

Q. Now, excluding that consideration?

A. It should affect it one-third.

61 Q. Then you would say about $8,000?

A. Yes, sir.

Q. Of course, this question is upon the theory that the plaintiff was required to devote such time and care as is ordinarily required where the attorney's client is a corporation living at a distance, and it is not based with reference to his statement as to the particular character of what he actually did?

A. Yes, sir.

Redirect:

Q. You have stated, in answer to his honor, an estimate based on your own observation, and certain assumptions are put by the court excluding evidence of Mr. Treadwell as to what he had done. That evidence which you have heard yesterday and to-day, does it or not reveal to you, if true, the performance of many labors on his part which you did not personally witness?

A. Yes, sir. Of course, I could only see the results. I could see that the case had been thoroughly prepared, but of what he had to do or steps to take, I had no knowledge of the detail of it. I think it was the most interesting case that I ever had any personal connection with. It

62 required a great deal of skill and ingenuity on the part of counsel. Mr. Treadwell stands as first class as a Boston lawyer with reference to lawyers of his age.

Recross:

But three cases were finally tried before me as referee in which awards were finally given, the St. Paul, the Franklin, and the Oswego and Onondaga.

The plaintiff's counsel reads in evidence the letter of November 17, 1876, from Mr. Brazier:

OFFICE OF W. H. BRAZIER, INSURANCE,
155 *Broadway, New York, Nov.* 17, 1876.

JNO. P. TREADWELL,
Attorney, Boston:

DEAR SIR: The photo. is now in St. Louis, and I will hear from it in a very few days, and will notify of the result of our enquiry. Have spent

two days in searching for information in regard to T., but can learn nothing. So far have not been able to see Brewster, but have found his report, and judging from his den I am sure he had ought to know Taylor.

Mr. J. D. Higgins, of 192 West street, I think would be a competent witness against Morrell. He is a man whose statement in any matter or manner would be highly respected by court or jury. A suit is
63 pending against him herein by Morrell, but he knows Morrell well enough to answer the usual question affirmatively. You had better write him and satisfy yourself as to this competency. I am also looking for other parties, and will report to you promptly.

Truly, yours,

WM. H. BRAZIER.

Also the following two letters:

NEW YORK, *Sept.* 28, 1875.

L. S. JORDAN, Esq.:

DEAR SIR: Mr. Lott, my fellow-committeeman, advises that it is improper to ask co's represented here to advance more money in matter of T., R. & Co., but says he will advise the payment (our proportion) of bill of stenographers. So you had best send bill to me for such services, giving proportion of each company, and I have no doubt all will be paid on recommendation of Mr. Lott and myself.

Truly, yours,

W. H. BRAZIER.

NEW YORK, *March* 15, 1875.

L. S. JORDAN, Esq.:

DEAR SIR: I am of the opinion that you have misapprehended the intention of New York and others represented here as to contributing towards expenses of suit of T., R. & Co. They have been, and still are, willing to contribute to any and all proper expenses in the defense,
64 and only decline to advance money for that purpose.

I am safe in saying that you need have no fear in going on and making the most vigorous defence possible, and all companies here will contribute to all proper expenses. What more could be asked? When is suit likely to take place? You can rest assured the case will be strongly contested by the companies sued here. Will you notify me by telegram when suit is about to be commenced.

Yours truly

W. H. BRAZIER.

(These letters are objected to by the defendants' counsel, upon the ground that action by a single member of the committee, where joint action was not taken and where there was no consultation, is not competent. Objection overruled. Exception by the defendants.)

And thereupon the plaintiff rested his case.

The defendants' counsel thereupon moved that the court, upon the plaintiff's evidence, direct a verdict for the defendants upon the following grounds:

1. That no employment of the plaintiff by the committee has been
65 proved, it being requisite that the committee should act by all its members or as the result of a meeting at which either all were present or were invited.

The court refused to do so, and the defendants duly excepted.

2. That under the agreement there was no right of action against the companies. If the plaintiff was employed by Mr. Jordon, by Mr. Sproat, by Mr. Brazier, or by Mr. Lott, or by all, he must seek his compensation from them and leave them to settle with the parties who are behind them.

The court refused to do so, and the defendants duly excepted.

3. That inasmuch as the agreement of April 24, 1874, is the foundation of any claim which the plaintiff can have he was subject to its terms; and that one condition of the paper was that any amount which either company was called on to pay should be fixed by the committee, and should only be paid upon the demand of the committee.

That there was no evidence of any such demand or of any action in that direction by the committee, and that there was no evidence of any attempt on the part of Mr. Treadwell to procure such action.

66 The court refused to do so, and the defendants duly excepted.

4. That the agreement was not one under which any joint liability could be created. That the provisions of the agreement were specific, the parties to the agreement were only to pay severally and pro rata any amount that should become due under the agreement.

The court refused to do so, and the defendants duly excepted.

And thereupon HUBERT GIROUX, being called on behalf of the defendants and duly sworn, testified:

I am president of the Lafayette Insurance Company of New York, and have been for eleven years. Have been present during this trial. My company is one of the defendants. I became acquainted with Mr. Jordan some six or seven years ago, prior to the fire. We are one of the parties to the agreement of April 24, 1874. I remember receiving Mr. Jordan's letter of February 16, 1875.

I wrote the answer. There was a conference in New York subsequent to the receipt of Mr. Jordan's letter of February 16, 1875.

Before writing the answer, as soon as received that, I called upon Mr. Brazier. I met him at the Kings County Insurance Company. Mr. Lott also came there, to the best of my recollection. There were at
67 least four of us. The Adriatic Company were, I think, not represented, although they may been. We then resolved to decline that polite invitation, and I wrote that letter in consequence for my company. We did determine at that meeting to do so in substance exactly what my letter states.

Our company at that time was sued here; it was sued about a month prior to December 20, 1875. All these four New York companies were sued here about the same time. They employed Mr. Theron G. Strong to defend.

I remember receiving Mr. Jordan's letters of the 8th of October, 1874, or a similar letter, in which he asks a contribution towards $400 as expense for detectives and appraisers. We paid $20 for our share of contribution to that expense.

The New York companies paid forty per cent. in settlement. The aggregate of the New York insurance was $12,500—three $2,500, and one $5,000 policy. I never heard of the name of Mr. Treadwell until we were sued in this suit, to the best of my reflection. The suit brought against our company in New York was not tried. We compromised and
68 paid a certain amount of money. None of the suits against New York companies were tried.

DECEMBER 11, 1879.

JOHN P. TREADWELL, the plaintiff, recalled for further cross-examination, testified:

My bill of particulars contains the item, "Feb'y 16, 1875. Two hours with Mr. Jordan, and letters to all the companies." I think that correctly represents a service rendered by me.

JAMES R. LOTT, called and examined as a witness for the defendants, testified:

I have been present through this trial. I am the president of the Mechanics and Traders' Company, one of the defendants. I first became acquainted with Mr. Jordan as early as the issue of the policies to Taylor, Randall & Co. His firm obtained the policies from the New York companies.

The New York companies on or about October, 1874, received a request to contribute to the expense of the employment of detectives and appraisers in Boston. They did contribute; I think it was about $20. The next request or application made, either to me or to my knowl-
69 edge, to any of the companies or to Mr. Brazier, for the payment of anything towards the Boston litigation, was by the letter of February 16, 1875. Thereupon there was a meeting between myself and Mr. Brazier of the committee and officers of the New York companies. All we had to do with, as I considered, was the New York companies. The determination reached was that we would not contribute to the Boston litigation. A few days after that I saw Mr. Jordan. He called in the office, and I told him that the companies had never never agreed (that is my impression now) to any part of these Boston expenses; but that our suits were going on here, and we did not know what they would amount to. My impression is that I told him that Mr. Brazier and I and the insurance companies declined to contribute towards those expenses.

I was neither asked by Mr. Jordan nor by any other person to authorize the employment of Mr. Treadwell under the agreement of April 24, 1874. I never did do so.

70 Q. When did you learn that there were suits going on in Boston?

A. I cannot remember; but the first recollection is that Mr. Sproat had employed a relative to conduct the suits.

Suits were brought in New York against all the New York companies. The settlement of those suits, as eventually made, was made with the concurrence of Mr. Brazier and myself as members of the committee. Mr. Brazier took the most active part of the settlement.

Being cross-examined, he testified:

The determination of our meeting was that we would not respond affirmatively to the request of Jordan's circular of 16th February.

EDWARD T. BACKHOUSE, called and examined as a witness for the defence, testified:

I am president of the Kings County Fire Insurance Company. Our company received the application of October, 1874, to contribute $20 towards the sum of $400. The company was called upon for contributions at different times, and paid them. We did contribute. I was present at the meeting when Mr. Brazier and Mr. Lott were present, which
71 was called on the receipt of Mr. Jordan's letter of February 16, 1875.

Mr. Jordan came to our office a few days after the receipt of that letter. I told him that I had seen Mr. Lott and Mr. Brazier, and that they had advised me not to pay it; that they had determined to contribute nothing further towards *to* the expenses that were going on in Boston. That Mr. Brazier had been informed by Mr. Jordan that the companies sued in Boston would contribute nothing towards defending our suits here in New York, and that we should have to pay the expenses here, each of us to pay for the suit, and that we should contribute nothing further towards the expenses in Boston.

Being cross-examined, he testified:

The letter now shown me was written by our secretary. He carries on a correspondence, but it is always submitted to me on anything of importance.

It was read in evidence as follows:

KINGS COUNTY FIRE INSURANCE CO. OF BROOKLYN,
59 *Liberty Street, N. Y. New York, Feb.* 20, 1875.

L. S. JORDAN, Esq., *Boston, Mass.:*

DEAR SIR: In answer to your favor of the 16th instant relating
72 to the Taylor, Randall & Co. matter, the president of this co. directs me to say that having agreed to refer the defence of the claim in question to a committee, he does not feel inclined to respond to any further call for defraying expenses in the matter unless such call should be made by the whole committee; but he at the same time wishes you to understand that he is willing to further your exertions in the case and meet his share of any expense that the committee may think will strengthen the defence.

Very truly, yours,

HENRY POPE, *Sec'y.*

JAMES R. LOTT recalled.

No call for defraying expenses in Boston was ever made by the whole committee. The whole committee never met.

Q. Did Mr. Jordan ever make any statement to you upon the subject of any employment by him in the name of or acting as a member of this committee of Mr. Treadwell?

(Objected to by the plaintiffs' counsel. Objection sustained. The defendants duly excepted.)

I never knew or was told that Mr. Treadwell was acting or
73 claiming to act under the direction of the committee.

And thereupon the evidence being closed, the defendants by their counsel duly requested the court to direct a verdict for them upon the several grounds stated at the close of the plaintiffs' case.

The court in each case refused, and the defendants by their counsel in each case duly excepted.

The defendants by their counsel further requested the court to direct a verdict for them upon the ground that no cause of action had been established for the plaintiffs.

The court refused to do so, and the defendants by their counsel duly excepted.

The defendants by their counsel then requested the court to instruct the jury that for the employment of counsel under the agreement of April 24, 1874, there was required the unanimous action of the four members of the committee.

The court refused so to charge, and charged that "There is no evidence in the case that the committee met formally and retained the plaintiff, but there is evidence from which the jury can find that Mr. Jordan
74 and Mr. Sproat, acting in behalf of the committee, retained the plaintiff and consulted with him during the progress of the litigation; that Mr. Brazier also consulted with him during the litigation, and that Mr. Lott was aware that plaintiff had been employed, and was acting under the employment, and that he acquiesced in it, and if the jury find that the four members of the committee concurred in the employment of the plaintiff, or knowing that he had been employed, and was acting in behalf of the committee, acquiesced in what had been done, that is sufficient."

To which refusal and charge the defendants by their counsel duly excepted.

The defendants by their counsel further requested the court to instruct the jury that for the employment of counsel under the agreement of April 24, 1874, there was required either the unanimous action of the committee or action of a meeting of the committee at which all were present or were notified to be present.

The court refused so to do, and the defendants by their counsel duly excepted.

The defendants by their counsel further requested the court to instruct the jury that if in February, 1875, Mr. Lott and Mr. Brazier, of
75 the committee, in concert with the defendants, declined to make or authorize any expense or any further expense for litigation in Boston, and Mr. Jordan and the plaintiff were apprized of this, the plaintiff cannot recover for future services.

The court refused so to do, and the defendants by their counsel duly excepted.

The defendants by their counsel further requested the court to instruct the jury that the law does not permit Mr. Jordan and Mr. Sproat, in the interest of the companies represented by them, to incur expense under the agreement of April 24th, 1874, against the objection of Mr. Brazier and Mr. Lott, in favor of parties having notice of the objection.

The court refused so to do, and the defendants by their counsel duly excepted.

The defendants by their counsel further requested the court to instruct the jury that if at the time mentioned by Mr. Treadwell he was informed that the New York companies had settled or agreed to settle with the approval of Mr. Lott and Mr. Brazier, the defendants are not liable for the future services of Mr. Treadwell.

76 (The court refused so to do, and the defendant, by their counsel, duly excepted).

And thereupon the court instructed the jury, among other things, as follows:

That the case was to be tried as though every insurance company who became a party to the agreement of April 24, 1874, were here in court; that the rights and the obligations of the parties were the same as though all the companies were here, and not the defendants alone.

(To which the defendants by their counsel duly excepted.)

That the defendants had bound themselves solemnly by the agreement to contribute to the expenses of the Boston litigation.

(To which the defendants by their counsel duly excepted.)

That unless the plaintiff understood that all the parties to the agreement of April 24, 1874, proposed to discontinue his services, then, if he was originally employed, he was entitled to compensation; that he was not representing the New York companies alone; he was representing the committee; that they were representing all the companies, and

77 that so long as there was one of the companies which signed that agreement desirous of continuing the litigation in Boston, it was the duty of the committee to stand by that company; and that it was the duty of the plaintiff to continue the services as though the defendants had not settled the claims against them, unless he understood that all the companies represented by the committee had decided not to continue the litigation, but that the plaintiff was subject to the control of the committee, and that when the committee requested him to discontinue his services he should have done so, and if he did not, could not recover for anything after that.

(To which the defendants, by their counsel, duly excepted.)

The jury found a verdict of $8,000 for plaintiff.

And because the said several matters do not appear by the record of this action. the defendants, for the purpose of reviewing the various rulings and decisions of law to which exceptions were taken by them, have caused this bill of exceptions to be prepared, and the said justice has signed and sealed the same this twenty-second day of April, 1880.

W. J. WALLACE, [SEAL.]
District Judge.

78 (Endorsed:) U. S. circuit court, southern district New York. James P. Treadwell vs. The Adriatic Fire Ins'ce Co. & others. Bill of exceptions. Man & Parsons, 56 Wall st., N. Y.

Directively service of a copy within is hereby admitted, this 22nd day of April, 1880.

WILSON & WALLIS,
Pl'ff' Att'ys.

Filed April 22, 1880.

79 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and eighty.

THE ADRIATIC FIRE INSURANCE COMPANY, THE Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company and The Kings County Fire Insurance Company, plaintiffs in error,
against
JOHN P. TREADWELL, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Adriatic Fire Insurance Company, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire
80 Insurance Company, by John E. Parsons, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant and against the said plaintiffs, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendant.

And the said plaintiffs pray that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that they, the plaintiffs, may be restored to those things which they have lost by reason of the said judgment.

JOHN E. PARSONS,
Attorney for the Plaintiffs in Error.

To WILSON & WALLIS, Esq's,
Att'ys for Def't in Error.

81 (Endorsed:) A. 295. U. S. Supreme Court. The Adriatic Fire Insurance Co. et al., plaintiffs in error, vs. John P. Treadwell, def't in error. Assignment of error. Man & Parsons, pl'ffs' att'ys, 56 Wall st., N. Y. U. S. circuit court. Filed July 15, 1880. John I. Davenport, clerk.

82 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and eighty.

THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company, plaintiffs in error,
against
JOHN P. TREADWELL, DEFENDANT IN ERROR.

And afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the

Capitol, in the city of Washington, freely comes here into court the said John P. Treadwell, by Luther R. Marsh, esq., his attorney, and says that there is no error either in the record or proceedings aforesaid, or in
83 the giving of the judgment aforesaid; and he prays that the said Supreme Court of judicature, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

LUTHER K. MARSH,
Attorney for Defendant in Error.

To Messrs. MAN & PARSONS,
Att'ys for Plaintiffs in Error.

(Endorsed:) U. S. Supreme Court. The Adriatic Fire Insurance Company et al., pl'ff in error, ag'st John P. Treadwell, def't in error. Joinder in error. Wilson & Wallis, def't's att'y, 48 Wall st., N. Y. City. U. S. circuit court. Filed Jul. 20, 1880. John I. Davenport, clerk.

84 *Bond for damages and costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

JOHN P. TREADWELL PLAINTIFF,
vs.
THE ADRIATIC FIRE INSURANCE COMPANY, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company, defendants.

Know all men by these presents that we, Herbert Giroux, of the town of Flatbush, Kings County, State of New York, and Edward T. Backhouse, of No. 237 Carlton avenue, in the city of Brooklyn and State of New York, are held and firmly bound unto the above-named plaintiff, John P. Treadwell, in the sum of seventeen thousand one hundred dollars, to be paid to the said John P. Treadwell, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twenty-third day of June, in the year of our Lord one thousand eight hundred and eighty.

Whereas the above-named defendants have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named defendants shall prosecute their writ of error to effect, and answer all damages and costs if the said defendants fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

E. T. BACKHOUSE. [L. S.]
H. GIROUX. [L. S.]

Sealed and delivered and taken and acknowledged this 23d day of June, 1880, before me.

[L. S.] LEVI S. TENNEY,
Notary Public, New York Co.

85 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Edward T. Backhouse, of No. 237 Carlton avenue, in the city of Brooklyn, and Herbert Giroux, of Flatbush, Kings County, State of New York, being duly sworn, severally depose and say and each for himself says that he is worth the sum of seventeen thousand one hundred dollars over and above all his just debts and liabilities.

E. T. BACKHOUSE.
H. GIROUX.

Sworn to this twenty-third day of June, A. D. 1880, before me.

[L. S.] LEVI S. TENNEY,
Notary Public, New York Co.

Service of a copy of within is hereby admitted this 24th day of June, 1880.

WILSON & WALLIS,
Att'y' for Pl'ff.

(Indorsed:) A. 295. U. S. circuit court. John P. Treadwell vs. The Adriatic Fire Insurance Company and others. Bond for damages and costs on writ of error. Man & Parsons, def'ts' proctor, 56 Wall street, N. York.

The within bond is approved as to form, amount, and sufficiency of the sureties.

June 24, 1880.

SAM'L BLATCHFORD, *C. J.*

U. S. circuit court. Filed June 24, 1880. John I. Davenport, clerk.

86 UNITED STATES OF AMERICA, *ss:*

To John P. Treadwell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein The Adriatic Fire Insurance Company, The Mechanics and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and eighty, and of the Independene of the United States the one hundred and fourth.

SAM'L BLATCHFORD, *C. J.*

87 (Indorsed:) U. S. Supreme Court. A. 295. The Adriatic Fire Insurance Co. and others, plaintiff in error, against John P. Treadwell, defendant in error. Citation. Man & Parsons, att'ys' pl'ffs in error, 56 Wall st., N. Y. U. S. circuit court. Filed Jun. 24, 1880. John I. Davenport, clerk.

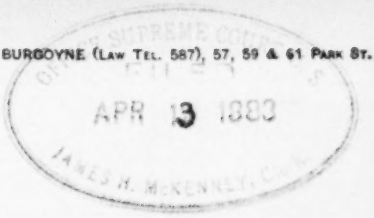
Service of a copy of within citation hereby admitted June 24, 1880.

WILSON & WALLIS,
Att'ys for Pl'ff.

(Indorsement on cover:) No. 250. The Adriatic Fire Insurance Company, The Mechanics & Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and The Kings County Fire Insurance Company, plaintiffs in error, vs. John P. Treadwell. S. New York C. C. U. S. Filed 7th August, 1880.

108-361

BURGOYNE (Law Tel. 587), 57, 59 & 61 Park St.



SUPREME COURT OF THE UNITED STATES.

THE ADRIATIC FIRE INSURANCE Company, The Mechanics' and Traders' Fire Insurance Company, The Lafayette Fire Insurance Company, and the Kings County Fire Insurance Company,

Plaintiffs in Error,

vs.

JOHN P. TREADWELL,

Defendant in Error.

No. 250.

In error to the Circuit Court of the United States for the Southern District of New York.

The defendant in error sued the four insurance companies, plaintiffs in error (all of New York) to recover $15,000 for legal services in the defence of suits brought in Massachusetts by Taylor, Randall & Co., on fire insurance claims against *other* companies.

The complaint alleged that the suits involved matters of interest and importance to the four companies, and it averred that the four companies, and the other companies jointly and severally agreed to pay (fols. 6–7).

The four companies admitted that the Massachusetts suits involved matters of interest to them, and admitted the non-payment of Mr. Treadwell's claim. The other averments of the complaint were put at issue (Answer, fols 13, 14).

The action came on to be tried on December 9, 1879, before Mr. Justice Wallace, then District Judge for the Northern District of New York. The following facts appeared:

The fire was in November, 1873. The companies interested were:

German, of Erie, amount of policy	$5,000
Kings County, New York	5,000
Mississippi Valley, of Memphis	5,000

Millville, of New Jersey	5,000
St. Paul, Minnesota	2,500
Hibernia, of Newark	2,500
Oswego and Onond'ga, of New York	2,500
Lafayette, New York	2,500
Mechanics' and Traders'	2,500
Franklin, of Wheeling	2,500
Hudson, of New Jersey	2,500
Clay, of Kentucky	2,500
Farragut, of New York	2,500
Security, of New Haven	2,500
Globe, of Chicago	2,500
Great Western	2,500
Allemania, of Pittsburgh	2,500
Atlantic and Pacific, of Chicago	2,500
Franklin, of Indianapolis	2,500
Ben. Franklin, of Pennsylvania	2,500

Shortly after the fire suits were brought in Massachusetts against the St. Paul, the Franklin and the Farragut Companies. A Mr. Jordan, of Boston, represented those companies. He sent the papers to Mr. Treadwell, who was a friend of his; and was his lawyer for law business which he could control.

Mr. Treadwell's evidence, fols. 34, 49.
Mr. Jordan's evidence, fols. 29, 30.

Suits were also commenced in Massachusetts against the Clay Company, the Globe, and the Oswego and Onondaga. They were represented by a Mr. Sproat. A Mr. Sanford at first appeared for those companies; subsequently Mr. Sproat handed the papers to Mr. Treadwell, and he appeared for them also.

Evidence of Mr. Treadwell, fol. 34.

On April 24, 1874, the four companies, plaintiffs in error, some of the companies sued in Massachusetts and some other companies, entered into an agreement (fol. 25) to unite in resisting claims upon the policies, and in the defense of such suits and legal proceedings as had been or might be instituted against any of the companies, and when required by the committee appointed by the agreement, to contribute and pay the costs, fees and expenses, *pro rata*. "That is to say, each company shall pay such proportion of said costs, fees and expenses as the amount insured by said company shall bear to the whole amount insured on said property by all the companies subscribing to this agreement" (fol. 25).

Mr. W. H. Brazier and Mr. James R. Lott of New York, with Mr. Sproat and Mr. Jordan were appointed a committee "with full power and authority to employ counsel and attorneys

to appear for said companies and each thereof, and defend said suits and legal proceedings, and to employ other persons for other services relative thereto, and to assess upon and demand and receive from such companies, from time to time, as such committee shall deem proper, such sum or sums of money for the compensation of such counsel and attorneys and such other persons and all other expenses of such defense of said suits as said committee shall deem necessary and expedient, such assessment upon and payment by each of said companies to be *pro rata*, as above mentioned."

Mr. Jordan testified (fol. 28) that *he, as one* of the committee, employed Mr. Treadwell to defend any suits that should be brought; that Mr. Treadwell appeared in the Massachusetts suits, and acted in them until their conclusion under his (Mr. Jordan's) direction, and *with the knowledge of the other members of the committee.* Mr. Jordan added: "I appointed Mr. Treadwell, in concert with Mr. Sproat, in Boston, and with the approval of Mr. Brazier. I had repeated interviews with Mr. Lott, at his office in New York, where I gave him the fullest account of what was done and being done from time to time" (fol. 29).

Mr. Treadwell testified (fol. 35) that Mr. Sproat and Mr. Jordan showed him the agreement of April 24, 1874: "I accepted the invitation to become the attorney of the companies." He further testified (fol. 51) that with the exception of one interview with Mr. Brazier and one interview with Mr. Strong, the attorney for the New York companies in suits brought there, he could not say that he had ever communicated with any of the companies or the committee, except Mr. Jordan and Mr. Sproat; and that no service was rendered by him from beginning to end which was not necessary and essential to the defense of the particular companies represented by Mr. Sproat and Mr. Jordan.

It appeared by Mr. Treadwell's evidence that after some preliminary skirmishing, the Massachusetts suits against the St. Paul, the Franklin, and the Oswego and Onondaga Companies (they were companies represented by Mr. Sproat and Mr. Jordan), were referred. The hearings on the reference commenced on September 6, 1876. The reference continued until January 24, 1877. There were twenty whole days and three fractions of days occupied by hearings.

Evidence of Francis W. Hurd, Esq., Referee, fol. 57.

On May 11, 1877, the Referees gave a verdict for the companies sued. Meantime, and on or about December 20, 1875, the four companies were sued in New York. They employed counsel, and subsequently compromised at forty per cent.

Evidence of Hubert Giroux, President of the Lafayette Co., fol. 68.

As early as November 17, 1876, Mr. Treadwell was informed of the settlement (his evidence, fol. 55).

The claim of the plaintiffs in error among other things was that the agreement created no joint liability; and that the committee never employed Mr. Treadwell to defend the Massachusetts suits at their expense; that from the beginning they had given notice that they would not be responsible, except that under special arrangement, they would consent to contribute to the expense of obtaining information for general benefit.

On October 8, 1874, Mr. Jordan's firm wrote to the New York companies asking them to contribute $400 for *detectives and appraisers*, adding, "It is not proposed to expend anything further, unless it shall be absolutely necessary, until the matter is closed up." Upon this, the companies contributed their *pro rata* to the $400.

On February 16, 1875, Mr. Jordan sent to the New York companies, a circular letter, inviting them to join in the defense of the Boston suits. (See letter, fol. 42, and Mr. Treadwell's evidence, fol. 68). This letter was prepared by Mr. Treadwell (fol. 68). The New York companies met, declined the invitation and on February 20, 1875, answered. "After a conference with the members of the committee here, Messrs. Brazier and Lott, we deem it inexpedient to advance any more money to defend the Boston companies" (fol. 44). This was prior to active litigation in Boston.

Evidence of Mr. Treadwell (fol. 50).

On January 2, 1877, the hearings before the Referee terminated; on January 24, 1877 (fol. 57), Mr. Treadwell wrote Mr. Jordan, proposing that the Lafayette Company (one of the New York companies) should pay $250, "so far as can be roughly estimated now, the proportion which that company must pay of the costs, fees and expenses to date."

On May 16, 1877, Mr. Treadwell made out a bill to Mr. Jordan as one of the committee, for $16,625, which Mr. Jordan enclosed to the New York companies with the statement: "*Your share of the bill is $978.52.* Please remit at once, agreeably with the terms of the contract for defense," &c., (fol. 46.) A bill of items having been requested, Mr. Treadwell, on or about June 23, 1877, wrote a letter to Mr. Jordan (fol. 26) which sufficiently indicates the exaggerated and unfair character of the claim. Upon the trial he resented any inquiry as to the value of the services which he had rendered. (His testimony, fol. 51.) His view of the value seemed to depend considerably upon what he called his "law point"—"that the goods burnt had been smuggled." (His Evid. fol. 37.)

The New York companies having declined to pay, Mr. Treadwell, instead of making demand upon the companies sued in Massachusetts, whom he had defended (Evid. of Mr. Jordan,

fol. 32), brought this suit against the four New York companies, for $15,000, for which he claimed that they were jointly liable. The aggregate of their policies was $12,500. They had employed counsel for their defense in New York at their own expense, and had paid $6,000 in settlement. Before the trial four companies had failed, and one—the Oswego & Onondaga—for whom Mr. Treadwell had appeared, had wound up. (Mr. Jordan's Evid., fol. 33.)

Judge Wallace instructed the jury, against objection and exception by the plaintiffs in error:

That the defendants had *bound themselves solemnly* by the agreement to contribute *to the expenses of the Boston litigation* (fol. 76).

That unless the plaintiff understood that all the parties to the agreement of April 24, 1874, proposed to discontinue his services, then, if he was originally employed, he was entitled to compensation; * * * that so long as there was one of the companies which signed the agreement desirous of continuing the litigation in Boston, it was *the duty of the committee to stand by that company;* and that it was the duty of the plaintiff to continue the services * * * unless he understood that all the companies represented by the committee had decided not to continue the litigation; but that the plaintiff was subject to the control of the committee, and that, when the committee requested him to discontinue his services, he should have done so, and, if he did not, could not recover for anything after that (fol. 76).

The plaintifis in error requested Judge Wallace to direct a verdict upon the grounds (fols. 33, 65):

That no employment of the plaintiff, by the committee, had been proved—it being requisite that the committee should act by all its members, or, as the result of a meeting at which either all were present or were invited (fols. 65, 73).

That it was a condition of the agreement of April 24, 1874, that any amount which either company was called on to pay should be fixed by the committee, and should only be paid upon its demand; that there was no evidence of any such demand or of any attempt by Mr. Treadwell to procure the action of the committee (fol. 73).

That under the agreement no joint liability could be created (fol. 73.)

That if, in February, 1875, Mr. Lott and Mr. Brazier, of the Committee, in concert with the defendants, declined to make or authorize any expenses or any further expense for litigation in Boston, and Mr. Jordan and the plaintiff were apprised of it, the plaintiff could not recover for future services.

That the law did not permit Mr. Jordan and Mr. Sproat in the interest of the companies represented by them, to incur expense under the agreement of April 24, 1874, against the ob-

jection of Mr. Brazier and Mr. Lott, in favor of parties having notice of the objection.

Judge Wallace refused. The plaintiff in error excepted in each case.

The jury gave a verdict of $8,000 for the defendant in error.

First.

It was error for Judge Wallace to permit a recovery by the plaintiff. There could be no recovery by him except upon the claim that the signers of the agreement of April 24, 1874, were *jointly liable*.

The agreement was most carefully framed to protect the signers from joint liability; and as Mr. Treadwell must look to that agreement for any authority upon which to hold the companies, he is bound by its terms. This would be so if Mr. Treadwell had had no notice of the limitations of the agreement. He had full notice. His testimony is that the agreement was shown to him, and that it was upon the agreement that he was retained. (Fol. 35).

1. In various forms of expression the agreement provides that the companies shall only be liable *pro rata*. This is defined to be in the proportion of the amount insured by each to the total amount insured by all. Such an agreement is several—not joint.

Ernst vs. Vartle, 1 Johns. Cases, 319.
Ludlow vs. McCray, 1 Wend., 228.
Peckham vs. North Parish, 16 Pick., 274.

Fill vs. Goslin, 11 Eng. Law & Eqr. 554,

And numerous other cases which could be cited.

2. The Committee had no authority outside of the agreement. Their agency was special. Where a special agency is created the principals cannot be held to a larger liability than that which they have agreed to.

The Floyd Acceptances, 7 Wallace, 666:

Though the Secretary of War may lawfully *issue* bills of exchange where these are the appropriate means of carrying into effect his prescribed duties, there can be no lawful occasion for him to *accept* drafts on behalf of the government, and such acceptances cannot therefore bind it, the public being chargeable with notice of the limitations upon his authority as a public agent.

The Court say (p. 676): "But in each case the person dealing with an agent knowing that he acts only by virtue of a delegated

power must, at his peril, see that the paper on which he relies comes within the power under which the agent acts."

Martin vs. Farnsworth, 49 New York, 555.

Defendant's vessel being ashore he telegraphed "send me a small tow boat * * make the best trade you can." *Held*, that the authority contemplated the hiring of a boat already manned and equipped, and that the agents were not authorized to assume on behalf of defendant the perils of the service, or to insure against the negligence of any one employed in handling the boat. The powers of a special agent are limited by the terms in which they are conferred and must be strictly pursued. The principal is not bound by his acts beyond the limits of the authority conferred.

Walsh vs. Hartford Fire Ins. Co., 73 N. Y., 5 (p. 10).

The act of the agent in excess of his authority never binds the principal *unless* third persons believing *and having a right to believe* that the agent was acting within *his authority* would sustain loss if the act was not considered that of his principal.

Dozier vs. Freeman, 47 Miss., 647.
Payne vs. Potter, 9 Iowa, 549.
Beach vs. Vandewater, 1 Sand. (Superior Court R.), 265.
Baxter vs. Lamont, 60 Ill., 237.
Morris vs. Watson, 15 Minn., 212.

3. Where an agent exceeds his authority he may make *himself* liable. He cannot create a liability against his principals. If Mr. Treadwell had been employed by the committee they might perhaps confer upon him the right to claim such liability of their principals as was authorized by the agreement. If they attempted to go beyond this it was they, not their principals, whom they would make liable.

No prudent insurance company would sign a different agreement. To do so might result in exposing a company whose insurance amounted to $2,500, the Lafayette Company for example, to a liability for $16,625, Mr. Treadwell's claim: for the matter of that, to a liability without limit.

4. Nor is it an answer to this to say that either company compelled to pay the whole expense incurred by the committee would have a right of contribution against other companies. It was to protect against the necessity of resorting to claims for contribution that the agreement was framed as it was. To sanction such a view of its practical effect is to pervert it into a joint instead of a several agreement.

Second.

Mr. Jordan and Mr. Sproat had no authority under the agreement of April 24, 1874, to employ Mr. Treadwell at the expense of the signers of that agreement. They only constituted two members of a committee of four.

There could be no action of the committee but at a meeting at which either all were present, or a majority were present and voted in favor of the action taken, notice being given to all.

And, without action of the committee *as such*, no liability could be created against the signers. It was error for Judge Wallace to refuse to instruct the jury accordingly; and to charge that mere knowledge and acquiescence by Mr. Brazier and Mr. Lott, in the employment of Mr. Treadwell, to defend the companies in Massachusetts, would create a liability against all the companies.

Board of Water Commissioners vs. Lansing, 45 N. Y., 19:

A statute authorized the Court to appoint, and it did appoint three appraisers to examine property to be taken for a public purpose and estimate the award to be made for it and report. The appraisers, after hearing the testimony, could not agree.

Two of them, Tremain and Norton, rendered a majority report, Ireland, the remaining appraiser, making a minority report. The proofs before the Court tended to show that Ireland was not present when Tremain and Norton rendered their decision, and the N. Y. Court of Appeals held that his absence invalidated the proceeding, even if a majority report would otherwise have been valid.

Hascal vs. Madison University, &c., 8 Barbour, 174:

The Board of Trustees of Madison University appointed a committee of three of its members to hear "arguments and re-" port their decision as to certain questions. The Court (page " 182), says: It was the duty, therefore, of all the members of " this committee to have met together, examined these legal dif-" ficulties and heard arguments concerning them * * * The " plain language of the resolution, as well as the rules of law " which declare what shall be necessary to render an execution " of a power or trust of this description a valid act, required the " members of the committee to meet together, &c."

Astor vs. Mayor, etc., 62 N. Y., 580, recognizes the same principle, but holds that it does not apply in a case where the absent commissioner voluntarily absents himself after notice (page 587).

Leonard vs. Darlington, 6 California, 123.

A sale of land in the City of San Francisco by a portion

of the Board of Commissioners of the funded debt does not pass a legal title on which ejectment can be maintained. Conceding that a majority may control, yet all must meet and consult, or have notice of a meeting that they may attend if they desire.

State, *ex rel.* Reeves vs. Ferguson, 31 N. J. Law (2 Vroom), 107. (page 124):

All the members of a corporation or a branch of a corporate body who discharge special functions for the society, having the right to consult and vote, must in some manner be notified to attend the meetings of the body with which they are connected.

Smyth vs. Darley, 2 House of Lords Cases, Clark and Finelly, 789.

1. The agreement provided for a committee in order that the signers might have the benefit of the formal and deliberate action of the committee, as such. Anything less would expose the signers to exactly what has resulted; a claim that liability was created by informal and disputed acquiesence.

2. Mr. Jordan and Mr. Sproat represented the individual interests of their companies. This created on their part an interest antagonistic to their action as members of the committee. To furnish to all the companies practical protection against improper or uncertain action on the part of Mr. Jordan and Mr. Sproat required that action to bind the committee should come from a meeting of the committee, or a meeting to attend which notice was given to all the members.

3. The correspondence shows that Mr. Brazier and Mr. Lott, the New York members of the committee, from the beginning took the position that the committee would not authorize the defense by Mr. Treadwell, of the Massachusetts suits. It was after this, and in spite of this, that Mr. Jordan, Mr. Sproat and Mr. Treadwell proceeded in the course which has resulted in Mr. Treadwell's claim. Protection was furnished to the signers of the agreement, against such consequences, by the requirement of the law that the action of a committee shall take place at a meeting, &c., and shall be evidenced by a vote.

Third.

It was error for Judge Wallace to instruct the jury that the defendants had *bound themselves* solemnly by the agreement, to contribute to the expenses of the Boston litigation. He made this charge without qualification or explanation. It left nothing

to the jury but to determine the amount of a verdict for the plaintiff.

1. The agreement contains no such provision. It in terms provides that action by the committee under the agreement, and by the committee, as such, is a condition of any liability by the companies whether to contribute to the expenses of the Boston litigation or to any expenses.

2. If this qualification were in the mind of the learned Judge, it should have been carefully explained to the jury. Without such explanation the charge was misleading. It substantially constituted a direction for a verdict for the plaintiff.

Fourth.

It was error for Judge Wallace to instruct the jury that so long as there was one of the companies signing the agreement, which desired to continue the litigation in Boston, *it was the duty* of the committee to stand by that company, and that it was the duty of the plaintiff to continue his services.

1. The agreement created no duty on the part of the committee to stand by any company, either in its defense of an individual suit against that company or at all.

In the most explicit terms that was left to the judgment of the committee.

2. The charge of the learned Judge, in effect permitted either company to require the committee at the expense of all the companies to defend the particular company, regardless of cost.

To instruct the jury that it was the duty of the committee to stand by a particular company was to inform them that the agreement created a legal duty on the part of the committee to that effect. The agreement creates no such obligation.

Fifth.

It was error for Judge Wallace to refuse to instruct the jury that any amount that either company was called upon to pay the agreement required the committee to fix, and that it was only payable upon the demand of the committee.

The agreement so provides, and to release Mr. Treadwell from the necessity of conforming to that provision the least that was required was that he should have made an effort to procure action by the committee as a condition of suing the signers of the agreement.

United States vs. Robeson, 9 Peters, 319:

(Page 327.) "Where the parties, in their contract, fix on a "certain mode by which the amount to be paid shall be ascer- "tained, as in the present case, the party that seeks an enforce- "ment of the agreement, must show that he had done every- "thing on his part which could be done to carry it into effect. "He cannot compel the payment of the amount claimed, un- "less he shall procure the kind of evidence required by the "contract, or show that, by time or accident, he is unable to do "so. And as this was not done by the defendant in the District "Court, no evidence to prove the service, other than the certifi- "cates, should have been admitted by the Court."

Scott vs. Avery, 5 H. L. Cas., 811.

Scott vs. Corporation of Liverpool, 28 L. J. Chancery, 230.

Sixth.

The authority conferred by the agreement upon the committee was not coupled with any interest in the committee. The committee were mere agents or attorneys to represent the signers of the agreement within the limitations imposed by its terms. Such an authority or agency is revocable.

Story on Agency, § 463.

It was error for Judge Wallace to refuse to instruct the jury that if Mr. Lott and Mr. Brazier, two of the committee, in concert with the defendants, in February, 1875, declined to authorize further expense for the Boston litigation, and that if Mr. Jordan and the plaintiff were apprized of it, he could not recover for future services.

Seventh.

Mr. Treadwell's claim as first presented, amounted to $250 for each company. As subsequently presented it was increased to $978.52 for each company. (Mr. Treadwell took the same view of the law of the agreement as do the plaintiffs in error.) This suggested, and the whole case shows a gross exaggeration of the services rendered by Mr. Treadwell to his Boston clients. The value of those services was put in issue. Mr. Treadwell was a witness

to prove the value. He testified to the amount of time which the services required. Mr. Hurd, the Referee, was examined as a witness for the same purpose. Upon his cross-examination he was asked what was a fair annual professional income for a gentleman of Mr. Treadwell's position at the Boston Bar. This was objected to by the defendant in error; the objection was sustained and the plaintiffs in error excepted. The witness should have been permitted to answer. It was error for the learned Judge to sustain the objection.

The value of the services rendered by Mr. Treadwell, depends upon the time given by him to the rendition of the services, and the value of that time. The same service rendered by the leader of the Bar is worth more than if rendered by a junior. The enquiry would have elicited, or would have tended to show the value of professional service from Mr. Treadwell. The question should have been allowed.

Last Point. It is respectfully submitted that the verdict does great injustice to the defendants. Through the verdict Mr. Treadwell, in concert with Mr. Jordan, his individual client, has put upon the New York companies the entire expense of the defense of Mr. Jordan's Boston suits, and has permitted his own clients to go scot free. This resulted from the erroneous view which was taken by the learned Judge of the law of the case.

There should be a new trial, with costs to the plaintiff in error.

JNO. E. PARSONS.

108-361

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U. S. SUPREME COURT.

No. 250.

THE ADRIATIC FIRE INSURANCE COMPANY
AND OTHERS,
Plaintiffs in Error,

versus

JOHN P. TREADWELL,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

LUTHER R. MARSH,
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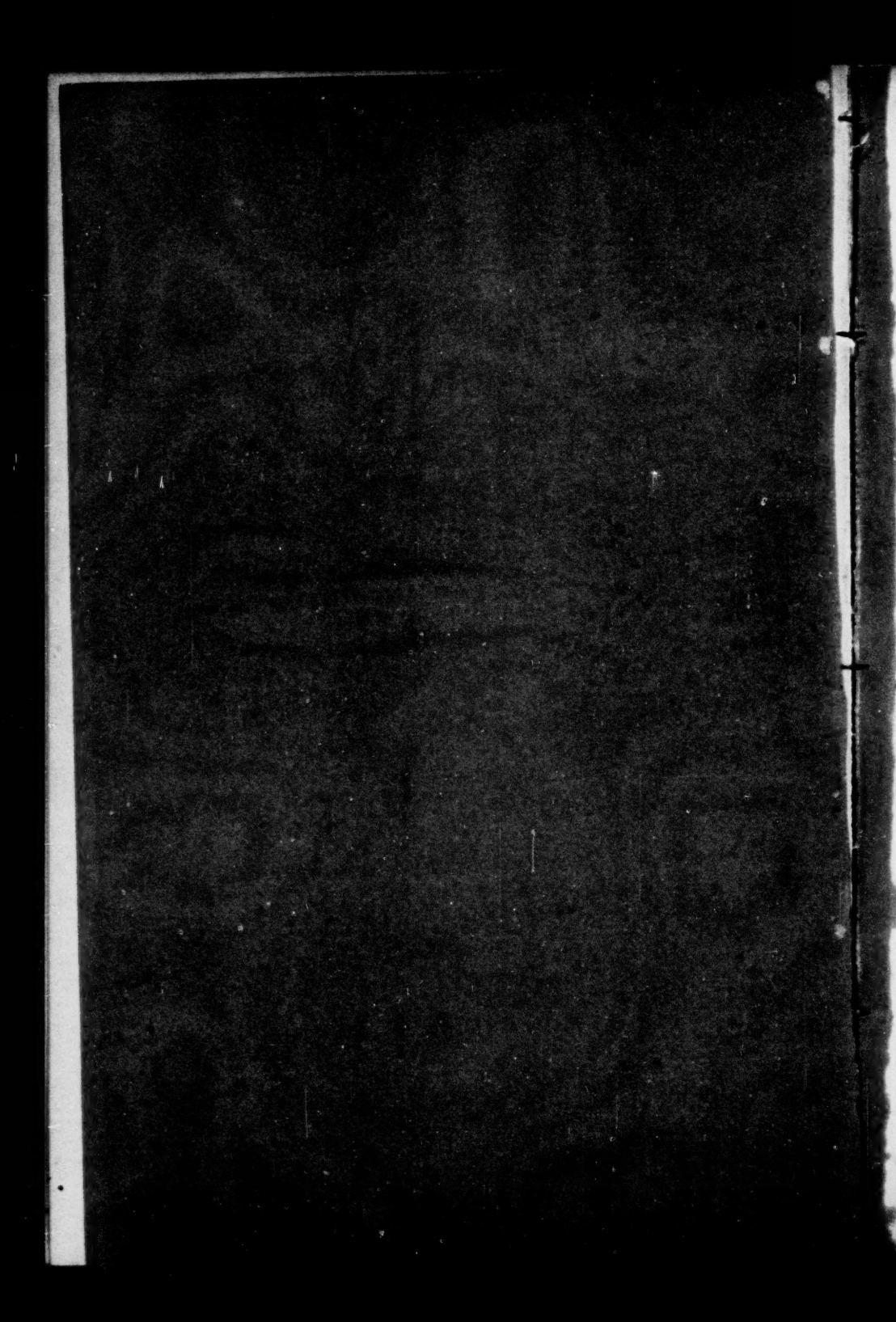

SUPREME COURT OF THE UNITED STATES.

THE ADRIATIC FIRE INSURANCE COMPANY, THE MECHANIC'S AND TRADER'S FIRE INSURANCE COMPANY, THE LAFAYETTE FIRE INSURANCE COMPANY and THE KINGS COUNTY FIRE INSURANCE COMPANY,

Plaintiffs in Error,

vs.

JOHN P. TREADWELL,

Defendant in Error.

No. 250.

Brief for Defendant in Error.

In the year 1873, a fire occurred on the premises No. 41 Central Wharf, Boston. An alleged firm of Taylor, Randall & Co. held policies of insurance, in a large number of insurance companies, upon property claimed to have been destroyed in this fire, and shortly after the fire the ordinary proofs of loss were served upon the insurance companies.

Early in 1874 actions were commenced by this alleged firm of Taylor, Randall & Co., at Boston, upon their policies, against several of the insurance companies. One of the companies so sued was the St. Paul Fire & Marine Insurance Co.

The following agreement was then prepared and executed:

IN RE TAYLOR, RANDALL & COMPANY

VERSUS

THE ST. PAUL FIRE & MARINE INSURANCE COMPANY ET ALS.

The undersigned insurance companies, having policies outstanding issued to Taylor, Randall & Company, upon property at Central Wharf, Boston, upon which claims have been made against said companies, do, in consideration of one dollar, by each paid to the other, and divers other good and valuable considerations, mutually covenant and agree to and with each other as follows, that is to say: the said companies will unite in resisting the claim made upon said policies, and on each thereof, and in the defense of any and all suits and legal proceedings that have been or may be instituted against any of said companies upon any of said policies, and will, when and as required by the committee hereinafter mentioned, contribute to and pay the costs, fees and expenses of said suits and proceedings *pro rata;* that is to say, each company shall pay such proportion of said costs, fees and expenses as the amount insured by said company shall bear to the whole amount insured on said property by all the companies subscribing to this agreement. The management of and conduct of said resistance to said claims and defense of said suits and proceedings shall be and is fully entrusted to and devolved upon a committee to be composed of W. H. Brazier and James R. Lott, of the City of New York; Charles W. Sproat, of the City of Boston; L. S. Jordan, of the City of Boston, which committee shall have full power and authority to employ counsel and attorneys to appear for said companies and each thereof and defend said suits and legal proceedings, and to employ other persons for other services relative thereto, and to assess upon and demand and receive from such companies, from time to time, as such committee shall deem proper, such sum or sums of money for the compensation of such counsel and attorneys, and such other persons and all

other expenses of such defense of said suits as said committee shall deem necessary and expedient, such assessment upon and payment by each of said companies to be *pro rata*, as above mentioned.

Each and every of said companies shall fully and faithfully adhere to this agreement, and shall refrain from any act or proceeding in reference to such claims or suit, or the defense thereof, that can or may in anywise defeat, obstruct or interfere with the acts or proceedings of said committee relative thereto, and shall at all times furnish to said committee any and all papers, information and assistance in and about such management and conduct of such resistance and defense as may be in the possession or power of said companies respectively, and as may be desired by said committee.

In witness whereof the said insurance companies have subscribed this agreement, this twenty-fourth day of April, eighteen hundred and seventy-four.

In presence of.

Franklin Insurance Co. of Indianapolis,
German Insurance Co., Erie, Pa.,
C. W. SPROAT, Agent.
St. Paul Fire and Marine Ins. Co.,
JORDAN, LOVETT & Co., Agents.
Franklin Ins. Co. of Wheeling.
JORDAN & NITCHIE, Attorneys.
Miss. Valley Ins. Co.,
W. H. BRAIZER.
Mechanics and Traders' Ins. Co., N. Y.
JAS. R. LOTT, Prest.
Kings County Fire Ins. Co.,
E. T. BACKHOUSE, Prest.
Lafayette Fire Ins. Co.,
H. GIROUX, Prest.
Adriatic Fire Ins. Co.,
CHAS. D. HARTSHORN, Sec'y.
Security Ins. Co.,
E. F. MERRILL, Asst. Sec'y.
Ben. Franklin Ins. Co. of Alleghany, Pennsylvania,
GEO. D. RIDDLE, Sec'y.
Hibernia Mutual Fire Ins. Co., Newark,
JNO. B. RICHMOND, Prest.
Globe Ins. Co. of Chicago, Ill.
W. B. BARTLETT, Attorney.
Clay Ins. Co.,
E. H. MARIN, Sec'y.
Oswego and Onondaga Ins. Co.
SAMUEL AVERY, Sec'y.

It will be observed that the four defendants and eleven other companies interested were parties to this agreement.

This agreement was made with express reference to the litigation already begun in Massachusetts, as is evidenced by the fact that the agreement was entitled in the suit there brought by Taylor, Randall & Co. against the St. Paul Company.

L. S. Jordan, one of the committee named, prepared this paper and obtained the signatures to it. After it was executed. Jordan, as one of the committee, employed Treadwell, the defendant in error, who was a lawyer, practising at Boston, to defend the suits brought there. In this employment Jordan acted in concert with Sproat and with the approval of Brazier, while the fourth member of the committee, Lott, was informed of it and of the services which Treadwell was rendering under the employment, and made no objection.

Treadwell entered upon this employment. As the fire took place in Boston and the evidence upon which the claims were to be maintained or defeated was there, it seems to have been the general understanding and expectation that the principal and decisive contest would be there.

Such expectation was fully justified by the event. None of the suits brought by Taylor, Randall & Co. went to trial excepting those at Boston, which were defended by Treadwell.

From the time of his employment the whole burden of the contest at Boston fell upon Treadwell. It lasted for about three years and terminated in an absolute victory, upon the merits, for the defense. The litigation required of Treadwell, and received from him, constant and arduous labors occupying about one-half of his time during this period. The trial was protracted; the volume of testimony was very large, and the result was the establishment of the fraudulent character of all the claims of loss.

It would very clearly appear from the evidence taken upon the trial of the present action, if such evidence were before this tribunal, that the services rendered by Treadwell in the original litigations were very great, and were well worth the value which the jury has here put upon them. This would seem to have been conceded, as the evidence upon the

value of Treadwell's services, which upon the trial herein was very full, has been omitted from the bill of exceptions.

Such evidence would have shown that Treadwell's services embraced the non-suit of the claimants in the first suits brought; the defense of a second set of suits, of which that against the St. Paul Company was the leading one; the removal of the causes to the United States Court; hearings therein—first before auditors and afterwards before Referees—embracing forty days altogether, according to Treadwell's books, and at least twelve days before the auditors and twenty-three days before the Referees, as stated in the testimony of Judge Hurd.

The record states (at page 14), that "The witness then "went on to state the nature of the claim and of the "defense, and gave a long and full account of the ser- "vices rendered, including a large amount of time and labor "spent in investigating the facts, finding witnesses, arrang- "ing evidence, and otherwise making preparation for the "hearings." And again, the record states, at folio 40: "The "witness proceeded to state further what took place upon the "reference." This testimony of the plaintiff, in fact, occupied several days of the trial of the present action. No exception has been taken which raises the question of its effect; it has been excluded from the record by the plaintiffs in error, because of its immateriality in view of the questions presented here. And certainly it will be deemed now to have been fully sufficient to sustain the verdict of the jury on the question of the value of Treadwell's services in the Boston litigation.

After the close of such litigation, Treadwell, being unable otherwise to obtain compensation for his services, commenced this action in the Circuit Court of the United States for the Southern District of New York, joining as defendants all the companies, parties to the foregoing agreement, within the jurisdiction of the Court.

The action was brought to trial in December, 1879, at New York City, before Mr. Justice Wallace and a jury, and the jury found a verdict against the defendants therein, the plaintiffs in error, for $8,000.

No question can be raised here as to the valuation which the jury put upon the services rendered by Treadwell.

As we have already stated, the testimony upon which the jury acted in determining the value of those services has been almost entirely eliminated from the record; and no exception has been taken which can present that question to this Court.

The questions which are raised have regard to the construction of the instrument above set forth, the powers of the committee therein named, and the nature and extent of the liability of the parties thereto. There is an additional point presented by an exception to the exclusion of a question so manifestly improper that the exception can hardly be seriously urged here. That question was "What, at the time "these services were rendered by Mr. Treadwell, was a fair an- "nual professional income for a gentleman of the position of "Mr. Treadwell at the Boston bar?" That which the jury were required to pass upon was, not the amount of a fair, annual professional income for Mr. Treadwell or any other gentleman of similar standing at the Boston Bar, but the amount which would be a fair and reasonable compensation to Mr. Treadwell for the services which he was admitted to have rendered.

And, certainly, if the question might be admissible, in any aspect of the case, this Court cannot be asked to pass upon its materiality, upon a record from which is excluded the ample testimony occupying days of the trial of the present case, which showed in the fullest and most complete manner the services rendered by the defendant in error, and that those services were undoubtedly worth, at the very least, the valuation which the jury, with *all the facts* before them, fixed upon.

We deem it proper to call attention to some matters embraced in the statement of facts of the plaintiffs in error.

It is therein stated that Mr. Jordan by a circular letter of February 16, 1875, invited the New York companies "to join "in the defense of the Boston suits." This is not a correct statement of the purport of that letter. The letter (p. 16) indicated that it might be desirable to take out commissions to examine witnesses in Germany, and proposed that the com-

panies interested, to whom the circular letter was addressed, should then *advance the money* needed to meet the expense of such commissions.

It is said that on the trial of the action Treadwell "resented "any inquiry as to the value of the services which he had "rendered." There is nothing in the record to support this assertion, and it would be fully refuted by Treadwell's testimony in detail, which, as we have already said, occupied whole days of the trial, had the plaintiffs in error seen fit to incorporate it in their bill of exceptions.

It is said that Treadwell, instead of making demand on the companies which he had defended in Massachusetts brought this action in New York. There is nothing in the record to show that he could have brought suit for his services in Massachusetts. It might fairly be assumed that he would have been glad to have sued these and all the other companies at Boston if he could. But whether he might or might not is a matter of no moment here. The statute gives him the right to sue in New York; to join all the defendants within the jurisdiction of the New York Circuit Court; and to omit to join those defendants not within the jurisdiction. Probably there is no other jurisdiction within the United States where he could have found and joined so many as in New York, and the sole question is whether these defendants are liable.

POINT FIRST. Under the agreement, the committee had full power to employ Treadwell.

"The said companies will unite in resisting the claim made "upon said policies, and on *each* thereof, and in the defense "of any and all suits and legal proceedings that have been or "may be instituted against any of said companies upon any "of said policies * * *. The management of, and con-"duct of said resistance to said claims, and defense of said "suits and proceedings shall be and is fully entrusted to "and devolved upon a committee * * * which committee "shall have *full power* and authority to employ counsel and "attorneys to appear for said companies, and each thereof,

"and *defend said suits* and legal proceedings."—*Agreement, ante.*

This language is plain and comprehensive; its meaning it not to be disputed. The committee had full power to defend the Boston suits, and to employ Treadwell to conduct such defense.

POINT SECOND. The acts of the committee, in the employment of Treadwell were a sufficient and valid exercise of their power.

Upon the trial of the action the defendants' counsel maintained that this committee must act by all its members, or as the result of a meeting at which all were either present or invited; that for the employment of counsel there was required "the unanimous action of the four members of the "committee."

The Court held, and so charged the jury, that "There is "no evidence in the case that the committee met formally "and retained the plaintiff, but there is evidence from which "the jury can find that Mr. Jordan and Mr. Sproat, acting in "behalf of the committee, retained the plaintiff and con-"sulted with him during the progress of the litigation; that "Mr. Brazier also consulted with him during the litigation, "and that Mr. Lott was aware that the plaintiff had been "employed, and was acting under the employment, and that "he acquiesced in it, and if the jury find that the four mem-"bers of the committee concurred in the employment of the "plaintiff, or knowing that he had been employed and was "acting in behalf of the committee, acquiesced in what had "been done, that is sufficient." In this there was no error.

We do not for a moment maintain that each member of this committee possessed a separate and independent power to bind the parties to the agreement through which the committee was appointed, nor did the Court so hold. It was conceded that the concurrence or assent of all the members was requisite; and it was distinctly left to the jury to determine on the evidence whether there was such concurrence or

assent, in fact, and the jury, by their verdict, have found that there was.

The cases cited upon this head, in the second point for the plaintiffs in error, all relate to public boards, or committees having legislative or judicial functions. They have no applicability to the committee appointed by the defendants in this action.

A committee such as this is in no wise a formal board, or deliberative body. It is simply an agent. It is governed first by the provisions of the instrument through which it is created, and beyond those, by the principles of the law of agency. There is nothing which requires of it any formal meetings, any precise or formal mode of action. It is enough that all the members concur in what is done.

How, then, is this concurrence to be manifested?

Clearly, it is to be manifested just as in any other case where concurrence must be shown.

The simplest mode is, of course, where all those whose concurrence is to be established do actually speak with one voice, and unite in the practical execution of the common purpose. And in a rude and simple state of society it might seem necessary to adopt such a mode of action. But, although this mode might be the simplest, it does not by any means follow that it is the most conclusive.

For such concurrence is, in fact, nothing more than an agreement, a meeting together of minds. And all the rules in regard to the effect of the acts and conduct of parties as indicating assent or ratification are applicable. It is difficult to see how the learned Justice who presided at the trial could have stated the law on this point more clearly or more correctly.

The argument for the plaintiffs in error contains several assertions in regard to the purpose of the various provisions in the agreement under which this committee was constituted, which are not supported by the language of the agreement, or by any of the evidence in the case.

Thus it is said that "the agreement provided for a com-
" mittee, *in order that* the signers might have the benefit of
" the formal and deliberate action of the committee, as such."

The agreement does not so state, and there is no other evidence of its purpose.

Again, it is said that Jordan and Sproat represented the individual interest of their companies, and that therefore their interest was antagonistic to the proper discharge of their duties as members of the committee. But they were selected as members of the committee after their companies had been sued; the instrument in which they are named as committee is entitled in the action brought against one of the companies represented by Mr. Jordan, was drawn by Jordan, was signed first of all by Sproat and Jordan, and was by Jordan procured to be signed by the remaing companies. The inference would rather be, from these facts, that Sproat and Jordan were recognized as the parties having the strongest incentive to make a vigorous fight against the fraudulent claims of Taylor, Randall & Co., and that such resistance, which in the nature of things could be most advantageously made at Boston, in the actions brought against their companies, was expected to be productive of the greatest benefit to all the companies. It was the interest of Sproat and Jordan to do what the agreement distinctly provided for, that is, to contest the fraudulent claims; and it is not to be imputed to Jordan, as a fault, that he did it zealously, and gave a very large amount of his own time to this duty.

Again, it is said that the correspondence shows that Brazier and Lott, from the beginning, took the position that the committee would not authorize the defense by Treadwell, of the Boston suits. This assertion is in direct conflict with the evidence, which shows, as will be seen below, that Lott assented to what was being done by Treadwell, and that Brazier made active efforts to aid Treadwell, and that the only unwillingness manifested on their part, or on the part of the companies represented by them, was to the *advancing* of any more money towards the defense in Boston. Indeed, Brazier wrote to Jordan, March 15, 1875, "I am safe in saying " that you need have no fear in going on and making the " most vigorous defense possible, and all companies here will " contribute to all proper expenses."

Nor was there anything in the charge of the learned

Justice upon this point, which was not warranted by the evidence.

Jordan says (p. 11), "I appointed Mr. Treadwell in con- "cert with Mr. Sproat, in Boston, and with the approval of "Mr. Brazier. I had repeated interviews with Mr. Lott at "his office in New York, where I gave him the fullest "account of what was done and being done from time to "time."

Treadwell says (p. 13), "A consultation then took place "between Mr. Sproat and Mr. Jordan and myself about my "taking charge of all the cases. They told me that Randall "had sued all the companies in Massachusetts, that had "attorneys to accept service there, and that the remaining "companies had been sued in other States— "these defendants in New York—and that as the "fire was located in Boston and all the evidence "was in Boston, the fight would take place there, "and they showed me the agreement. I accepted the invi- "tation to become the attorney of the companies." Also (p. 14), he speaks of an interview with Brazier, while the trial was in progress, in which he gave Brazier full information, and Brazier told Treadwell that he was going to throw himself a little more into the case

November 17th, 1876, Brazier wrote to Treadwell (p. 23) of his efforts to find evidence for the latter.

September 28, 1875, Brazier wrote Jordan (p. 24): "Mr. "Lott, my fellow-committeeman, advises that it is improper "to ask companies represented here to *advance* more money "in the matter of T. R. & Co., but says he will advise the "payment (our proportion) of *bill of stenographers*. So you "had best send bill to me for such services, giving propor- "tion of each company, and I have no doubt all will be paid "on recommendation of Mr. Lott and myself."

March 15, 1875, Brazier had written Jordan: "I am of "the opinion that you have misapprehended the intention of "New York and others represented here as to contributing "towards expenses of suit of T. R. & Co. They have been "and still are willing to contribute to any and all expenses "in the defense, and only decline to *advance* money for that "purpose. I am safe in saying that you need have no fear "in going on and making the most vigorous defense possible,

"and all companies here will contribute to all proper ex-
"penses."

Surely here was evidence from which the jury might find that the four members of the committee concurred in the employment of the plaintiff, or, knowing that he had been employed and was acting in behalf of the committee, acquiesced in what had been done.

POINT THIRD. There was no error in the instruction that the defendants had bound themselves to contribute to the expenses of the Boston litigation.

It is unquestionable that they had so bound themselves.

The Boston litigation had already begun when the agreement was made. The agreement is entitled in the Boston litigation, and was therefore made with express reference thereto, and it expressly provided that the companies "will
"unite in resisting the claim made upon said policies and on
"each thereof, and in the defense of any and all suits and le-
"gal proceedings that *have been* or may be instituted against
"any of said companies upon any of said policies," and that the companies will contribute to such defense.

In this there was nothing to mislead the jury, for the learned Justice carefully instructed them, as we have already seen, that it was for them to determine upon the evidence whether Treadwell had been in fact retained by the committee, and whether the four members of the committee had concurred in such retainer.

POINT FOURTH. The employment of Treadwell, once begun, continued in spite of any subsequent effort of individual companies to repudiate it or secede from it.

The agreement under which the employment was begun was an agreement of the various companies to unite together for what was deemed to be the common good. It was ex-

pressly designed to secure unity of action, and to bind the companies to stand by one another.

It provides distinctly that "each and every of said com-" panies shall fully and faithfully adhere to this agreement, " and shall refrain from any act or proceedings in reference " to such claims or suit or the defense thereof that can or " may in any wise defeat, obstruct or interfere with the acts " or proceedings of said committee relative thereto."

How, then, can it be seriously urged that any company, party to this agreement could, at its option, retire from the contest and leave the remaining companies to bear the burdens which it had assumed, or that the committee were not bound to continue in the course marked out by this agreement so long as a single company desired to continue in it? Each party to the agreement had a right to have it carried out, and the agreement remained in force until all parties agreed to abrogate it. Secession by any company was expressly guarded against.

The charge upon this point is not open to criticism. The learned Justice instructed the jury "that unless the plaintiff " understood that all the parties to the agreement of April " 24, 1874, proposed to discontinue his services, then, if he " was originally employed, he was entitled to compensation; " that he was not representing the New York companies " alone; he was representing the committee; that they were " representing all the companies, and that so long " as there was one of the companies which signed " that agreement desirous of continuing the liti-" gation in Boston, it was the duty of the " committee to stand by that company; and that it was the " duty of the plaintiff to continue the services as though the " defendants had not settled the claims against them, unless " he understood that all the companies represented by the " committee had decided not to continue the litigation; but " that the plaintiff was subject to the control of the com-" mittee, and that when the committee requested him to dis-" continue his services he should have done so, and if he did " not, could not recover for anything after that."

POINT FIFTH. The action of one or two members of the committee was ineffectual to terminate an employment regularly begun.

This follows as a matter of course from the principle that all the members of the committee must concur in the exercise of the authority entrusted to the committee. The same power was requisite to discharge Treadwell as to employ him.

It is maintained for the plaintiffs in error that the agency of this committee was revocable. Doubtless it was ; but only by the same power that had created it ; that is, by the united action of all the companies. But no attempt was made to revoke it. Neither was any attempt made by all the members of the committee to revoke or terminate the employment of Treadwell.

There is therefore no force in the exception (p. 28) to the refusal of the learned Justice to instruct the jury "That if in "February, 1875, Mr. Lott and Mr. Brazier, of the committee, "in concert with the defendants, declined to make or autho- "rize any expense or any further expense for litigation in "Boston, and Mr. Jordan and the plaintiff were apprised of "this, the plaintiff cannot recover for *future* services."

And there was, in fact, no evidence before the jury which would have made such instructions relevant and material.

March 15, 1875, Brazier wrote to Jordan: "I am safe in "saying that you need have no fear in going on and making "the most vigorous defense possible, and all companies here "will contribute to all proper expenses. What more could "be asked ?"

Shortly before that Giroux, president of one of the defendants here, wrote to Jordan, February 20, 1875: "After a "conference with the members of the committee here, Messrs. "Brazier and Lott, *we* deem it inexpedient to *advance any* "*more money* to defend the Boston companies" (p. 16). And there is no evidence that even this was ever communicated to the plaintiff.

POINT SIXTH. The defendants are jointly liable to the plaintiff for the value of his services.

The question here is one of the relation of the defendants to the plaintiff.

The agreement which is in evidence is relevant and material to show the authority of the committee to employ Treadwell; and that authority is full and clear.

What, then, is the result of the acts done by the committee under this employment? Clearly, it is the same as if the defendants had employed Treadwell directly, and without the interposition of the committee. The acts of the agents, within the scope of their authority, are the acts of the principals; and the scope of the authority here is thus expressed: "Which committee shall have full power and authority to "employ counsel and attorneys to appear for said companies, "and each thereof, and defend said suits and legal proceed-"ings."

Thus, it being established that Treadwell was employed to appear for one or more of the companies named, and employed to defend one or more of the suits and legal proceedings named, it is entirely immaterial whether that employment was through the committee or direct. The defendants were the employers, the plaintiff was the employed. The defendants were clients, and the plaintiff was their attorney and counsel. Treadwell was no party to the written agreement, nor did its terms in any manner concern him, beyond the fact that, in the fullest manner, it authorized his employment. Having been regularly and unconditionally employed by the defendants, he had, thenceforth, the right to look to them for compensation.

But it is urged that the further provisions of this agreement operate as a limitation of the rights of the plaintiff and of the liability of the defendants. We do not think that they can be justly so regarded.

The agreement was framed with a double purpose. It was designed to appoint and empower a committee which should take charge on behalf of all the companies, of the contest against the fraudulent claims of Taylor, Randall & Co. This purpose is indicated and fulfilled in that part of the document which we have last cited.

The agreement was also designed to express the rights and obligations of the parties as between themselves. This, no doubt, was its main purpose. The simple employment of

counsel might have been accomplished without any written instrument at all, and without any difference in the resultant relations between the companies and the counsel. But when it came to defining and fixing the relations of the different companies to one another, there was a manifest occasion for a written instrument. Individual companies might be tempted into a course of action injurious to the common interest; and, even if they remained harmonious as to the best line of policy to follow, there might arise disputes touching their relative shares of the expenses to be incurred. The companies which had the least at stake would naturally feel that the expenses ought to be borne *pro rata;* while the others might be disposed to claim, in the absence of written stipulation to the contrary, that the expense, incurred in the common cause and by the common consent, should be divided equally among all. And, again, some of the companies, after the first ardor for a vigorous contest had cooled off might be slow to contribute to the current expenses of the litigation.

And thus, we find the agreement framed with an obvious regard to those contingencies. The companies agree, that they will unite in resisting the claim made on their policies, *and on each thereof*, and in the defense of *any and all* suits; that they will contribute to and pay costs, fees and expenses, *pro rata*, according to the amounts of their respective policies; that the protection of their common interest shall be entrusted to a committee, whose acts shall be binding on all; that the committee may, *from time to time*, assess the companies *pro rata* as the committee may deem proper or necessary; and that each company shall refrain from all acts prejudicial to the common interest, and shall furnish to the committee all information and assistance in its power.

Now, it seems manifest, that these provisions were intended to secure and protect the companies as between themselves. In purpose and effect they are analogous to those contained in an ordinary agreement of copartnership. If the copartnership is once created, the outside world may deal with it, and hold it responsible upon its contracts, without regard to the provisions of the partnership articles, which define the rights, duties, powers and liabilities of the different members of the firm as amongst themselves. The creditors sue the members of the firm and obtain their judgment against all,

and any member who is thus held liable beyond the amount or extent of his liability, as fixed by the partnership articles, must seek redress and protection in proceedings against his copartners, for contribution, and not through any defense against the creditors.

So, here, the agreement concerns the plaintiff only as the most convenient mode of proving the committee's authority to employ him. It regulates the rights, duties and liabilities of the defendants *inter sese*, and under it they may call on one another for accounting and contribution. This is its purpose, and this is its effect.

Indeed, the effect of the provisions which are claimed to operate as a limitation on the power of the committee are, in reality an amplification of their power. They are first authorized to take full charge of the defense of all suits and proceedings, and to emyloy attorneys and counsel. This power was, of itself, complete and ample. But it was foreseen that there might be need of money from time to time, to meet the current expenses of the litigation, and so to the general power of the committee to bind the companies by the employment of counsel, and by all other acts necessary and proper in the conduct of the defense, there was superadded a power in the committee itself to make assessments from time to time and to demand and receive from each company its share of the expenses.

It should be carefully borne in mind, in considering this point, that the question here is not one of the nature of the liability of the defendants to the committee, but simply of their liability to the plaintiff. It seems to us that the defendants' argument confounds the two.

The companies agree to contribute *pro rata*, on the assessment and demand of the committee, to make up such sums as the committee shall deem necessary and expedient. But, suppose the committee, which has been harmonious in employing counsel, is unable to reach an agreement as to the proper amount of compensation for the services of counsel; suppose, as actually was the case here, one or more members of the committee die, or became otherwise incapacitated; suppose the committee refuses to make any assessment, or any call upon the parties to the agreement; will it be seriously contended that in such case the counsel regularly employed

by the committee is to have no compensation! Yet, in such case, he can get none, if the position of the defendants be correct.

Again, let us suppose that some of the parties to the agreement, perhaps the greater part of them, became insolvent; is it to be adjudged that the compensation of counsel, employed by the joint act of all, is to abate in the same ratio? Yet that would be the effect of the construction for which the defendants contend.

The power conferred upon the committee is a power to act in the defense of all the companies jointly, with a view to the common interest; it is not an authority to act for the St. Paul Company only, in the suit brought against that company, but it is an authority from all the companies to defend that suit,—in which the agreement was entitled and in which plaintiff was employed,—and all other suits which might be brought against any of the companies. And in what the committee should do it was not to act, now as the agent of the St. Paul Company, and now as the agent of the Lafayette Co., and now as the agent of the Adriatic Co.; it was to act not as the agent of the different companies severally, but as the agent of all together; and thus the act of the committee became the act of all, jointly, and conferred on the plaintiff a right of action against all, jointly, for the value of his services.

The cases cited for defendants are not adverse to the plaintiff's position.

Ernst vs. *Barth*, 1 Johns. Cas., 319, was a case where a minister was employed by two congregations, separately. Each congregation contracted directly with the minister, and they had no contract with one another, and nothing in common. Held, properly, that they were not jointly liable.

Peckham vs. *N. Parish in Haverhill*, 16 Pick., 274, was a similar case of one minister and two parishes. There was only a single instrument in writing, but by it each parish contracted directly with the minister,—the one promising to pay him the whole income of its parsonage funds, to be $285 annually, with the use of its parsonage lands and buildings, —and the other promising that the minister should receive

from it an additional sum of $60 per year. Held, that the liability of each parish under this agreement was several.

In *Fell* vs. *Goslin*, 11 Eng. Law & Eq., 554, the defendants had given a guaranty in these words: "We undertake and "guarantee that the said sum of £400 and interest shall be "duly paid to you when the said acceptance arrives at "maturity, in the proportion of £200 each." Held that the liability was not joint.

In each of these cases the contract itself was directly between the plaintiff and defendants, and by express terms forbade the idea of joint liability.

Ludlow vs. *McCrea*, 1 Wend., 228, was a suit between parties to a written instrument which bound the parties to prosecute certain actions for the common advantage and "to pay "each according to his relative and respective interest and "proportion in the said lands, all costs and charges and ex- "penses which shall or may be incurred in the said actions." The plaintiffs had paid such expenses, and brought this suit for a contribution. The Court expressed the opinion that the liability of the parties to one another was several. But it says nothing as to the nature of their liability to others, and in no manner intimates that they would not be jointly liable to one who acted under the employment of the committee constituted by the instrument. A claim for contribution is a several claim, in its very nature.

To the argument on behalf of the plaintiffs in error, that the agency of the committee was special only, and only authorized the employment of Treadwell with a limitation, by which he must be bound, that the companies should only be liable to him severally, and *pro rata*, according to their respective interests, and that such liability could only be enforced through the interposition of the committee, we answer that the agreement does not so state, and that the agency which it creates is twofold:

1. It creates a general agency in the committee, which is unlimited, excepting by their discretion, to employ counsel, to defend all suits, and to incur all expense necessary to that end, just as fully, and with just the same effect, as if the companies themselves were acting jointly and directly, in incurring the same expenses. For such purposes the acts of the

committee were the acts of the united companies; and Treadwell, by virtue of his employment by the committee, stood exactly where he would have stood, had the companies, themselves, unitedly employed him.

2. It creates a special agency in the committee, by which the committee is empowered to assess the companies from time to time, as emergencies might require, and to assess upon them, finally, their respective shares, as among themselves, of the common burden of the whole expenses incurred. As Brazier, one of the committee, is dead (p. 12), this power has became nugatory; for, as has been so strenuously maintained on behalf of the plaintiffs in error, *all* members of the committee must concur in any action in order to bind the companies.

Treadwell was, then, employed by the committee, in the exercise of their general powers, and if, as claimed by plaintiffs in error in their Fifth point, he can only recover through the action of the committee under their special powers, he can never recover anything at all for all his labors which have successfully defended the companies against a fraudulent claim of great magnitude.

For the purposes of this argument we have treated the case as if the four defendants were the only parties to the instrument by which the committee was appointed, or as if all the parties to that instrument were parties to the present action. This seems to be the clear intent of the provisions of the Revised Statutes of the United States.

"§ 737. When there are several defendants in any suit at "law or in equity, and one or more of them are neither in- "habitants of nor found within the district in which the suit "is brought, and do not voluntarily appear, the Court may "entertain jurisdiction, and proceed to the trial and adjudica- "of the suit between the parties who are properly before it; "but the judgment or decree rendered therein shall not con- "clude or prejudice other parties not regularly served with "process nor voluntarily appearing to answer; and non- "joinder of parties who are not inhabitants of nor found "within the district, as aforesaid, shall not constitute matter "of abatement or objection to the suit."

In *Barney* vs. *Baltimore City*, 6 Wallace, 286, it is said: "It is a rule of the common law that where one of several "joint obligors in a contract, whether verbal or in writing, is "sued alone, he can plead the non-joinder of the other "obligors in abatement, and in cases where the joint "obligors not sued were citizens of the same State with the "plaintiff, or were residents of some other district than that "where the suit was brought, the jurisdiction of the Court "was defeated. This very serious difficulty was remedied by "the Act of 1839 (present § 737); for in such cases the plaintiff "can now prosecute his suit to judgment against any one of "such joint obligors, in any district where he may be found."

POINT SEVENTH. We respectfully submit that no error is shown, and that the judgment should be affirmed.

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